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Douglas Park

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF LONG BEACH
AND
THE MCDONNELL DOUGLAS CORPORATION

DOUGLAS PARK

DEVELOPMENT AGREEMENT

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DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF LONG BEACH
AND
McDONNELL DOUGLAS CORPORATION

THIS DEVELOPMENT AGREEMENT is executed this _____ day of _____, 2004, by and between the CITY OF LONG BEACH, a charter city and municipal corporation of the State of California, on the one hand, and McDONNELL DOUGLAS CORPORATION, a Maryland corporation and a wholly-owned subsidiary of The Boeing Company, a Delaware corporation, on the other hand, pursuant to the authority set forth in the Development Agreement Act, the City's inherent power as a charter city, and the Enabling Ordinance.

RECITALS

WHEREAS, the City and Company recognize that construction and development of Douglas Park (consisting of a mixed-use complex and other related facilities described herein) will benefit both Parties by (1) creating significant opportunities for economic growth in the City, the Southern California region and the State of California, (2) allowing the Company the opportunity to realize increased value and returns from its Property, (3) providing for implementation of the public infrastructure needed to accommodate that growth, and (4) generating significant economic benefits to the State, the Southern California region, the City and Company; and

WHEREAS, Douglas Park will be consistent with and will be designed and implemented to further numerous comprehensive planning objectives contained within the City's General Plan; and

WHEREAS, development of Douglas Park is designed and intended to create jobs, expand the City's economic base and provide a positive fiscal benefit to the City at full build out; and

WHEREAS, Douglas Park will provide opportunities for new hotel and retail growth in the City which will provide new general fund revenues; and

WHEREAS, in order to provide certainty and render the Project's development more feasible in light of the capital investment necessary to implement the Project and the extended planning horizon necessary to coordinate a project of such scope and complexity, and in order to realize the public benefits contemplated to result from the development of Douglas Park, the City is willing to agree with the Company that, with respect to the Property, certain existing governmental entitlements shall, to the extent specified herein, not be changed or supplemented with inconsistent burdens and exactions during the term of this Agreement; and

WHEREAS, Company also recognizes and agrees that in extending these benefits to Company, the City will reserve certain legislative powers to protect the interests and

responsibilities of the City and to ensure that the public benefits contemplated by this Agreement are received; and

WHEREAS, the direct and indirect benefits the City expects to receive pursuant to this Agreement for its existing and future residents include, but are not limited to, Company's participation in funding certain needed public improvements and facilities in the City; and

WHEREAS, these public facilities and improvements will not only facilitate the Project, but will provide benefits to the general public on a regional basis; and

WHEREAS, the Company wishes to undertake the obligations and requirements set forth herein in order to receive the benefits accruing to the Company from this Agreement and to achieve the public benefits contemplated herein, including Company's commitment to the balanced land use and development plan for the Property set forth herein, and Company acceptance and approval of the conditions, requirements and restrictions imposed herein or incorporated herein by reference in connection with development of the Project; and

WHEREAS, for the foregoing reasons, the Parties desire to enter into a development agreement for the Douglas Park Project pursuant to the Development Agreement Act and the procedures and requirements established by the Enabling Ordinance upon the terms set forth herein.

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, the City's inherent powers as a charter city, and the Enabling Ordinance, and in consideration of the premises and mutual promises and covenants herein contained and other valuable consideration the receipt and adequacy of which the Parties hereby acknowledge, the Parties hereto agree as follows:

1. DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

1.1 "Accessory Use" shall have the meaning set forth in PD-32.

1.2 "Agreement" means this Development Agreement.

1.3 "Airspace And Avigation Easement" means that easement, in the form attached hereto as Exhibit "O," which will subject the Property to existing and future conditions caused by Long Beach Airport operations.

1.4 "Attorneys' Fees" means and shall be limited to (a) attorneys' fees, if any, awarded to a plaintiff by a court of competent jurisdiction pursuant to a final judgment in connection with any Litigation, or (b) the amount required to be paid, if any, to reimburse any plaintiff for the plaintiff's attorneys' fees as provided in a settlement agreement approved by City and Company in connection with any Litigation, as provided in Section 8.3.3 of this Agreement.

1.5 "Bike Path" means the bicycle trail comprising Segments 1, 2, 3, 4, and 5 as shown on Exhibits "E-1" and "E-2" attached hereto.

1.6 "Boeing" means The Boeing Company, a Delaware corporation, and its successors and assigns**.**

1.7 "Bonds" means any obligation to repay a sum of money, including obligations in the form of bonds, notes, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals, or long-term contracts, or any refunding thereof, which obligation may be incurred by or on behalf of a Public Financing District.

1.8 "California Building Standards Codes" means those building, electrical, mechanical, fire and other similar regulations, which are mandated by state law and which become applicable throughout the City, including, but not limited to, the California Building Code, the California Electrical Code, the California Mechanical Code, the California Plumbing Code, and the California Fire Code (including those amendments to the promulgated California codes which reflect local modification to implement requirements justified by local conditions, as allowed by state law, and which are applicable City-wide).

1.9 "City" means the City of Long Beach, a charter city and municipal corporation of the State of California duly organized and existing under the Constitution and the laws of the State of California.

1.10 "City Agency" means each and every agency, department, board, commission, authority, employee, and/or official (including, without limitation, each and every advisory agency or board, including, without limitation, the Recreation Commission and Airport Advisory Commission) acting under the authority of City, including, without limitation, the City Council and the Planning Commission.

1.11 "City Attorney" means the City Attorney of City.

1.12 "City Council" means the city council of City and the legislative body of the City pursuant to section 65867 of the Development Agreement Act.

1.13 "City Funds" means any City general fund monies, any tax increment monies, and/or any transportation improvement or capital fund monies.

1.14 "City Manager" means the chief executive officer of City.

1.15 "City Parcel" means that real property located at the northeast corner of the Project, currently owned by the City, and more particularly described in Exhibit "M," attached hereto.

1.16 "City Representatives" means all officials, advisory commissioners, agents, staff, employees, contractors, council members, planning commissioners, representatives, managers, affiliates, successors and assigns of the City or any City Agency.

1.17 "Code" means the City of Long Beach Municipal Code.

1.18 "Commercial Districts" means Subareas 7, 8A and 8B, as defined by the Development Standards.

1.19 "Company" means McDonnell Douglas Corporation, a Maryland corporation, which is a wholly-owned subsidiary of Boeing.

1.20 "Conditions of Approval" means any conditions, restrictions or requirements imposed by the Project Approvals, including, without limitation, any Development Requirements.

1.21 "Consumer Price Index" means the Consumer Price Index for all Urban Consumers, All items (1982-1984 = 100) for the Los Angeles-Riverside-Orange County Region or such successor index with which it may be replaced. If the above-described Consumer Price Index is discontinued during the Term for any reason and there is no successor or replacement index, City shall select a reasonable replacement index which is similar in nature and impact to the discontinued index and such replacement index shall be used in lieu of the discontinued index.

1.22 "Design Guidelines" means the guidelines for Development of the Project adopted by the City concurrently with the approval of the other Project Approvals.

1.23 "Development", whether or not capitalized, means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of Project Infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping and park facilities and improvements. "Development" also includes the remodeling, renovation, rehabilitation, repair, rebuilding, or replacement of any building, structure, improvement, landscaping or facility after the initial construction and completion thereof, as permitted under Section 3.2.1.5 during the Term.

1.24 "Development Agreement Act" means Article 2.5 of Chapter 4 of Division 1 of Title 7 (sections 65864 through 65869.5) of the California Government Code.

1.25 "Development Requirements" means the requirements of City imposed in connection with or pursuant to any Project Approval for the dedication of land, the construction or improvement of public facilities, or the payment of fees or assessments in order to lessen,

offset, mitigate or compensate for the impacts of Development on the environment or other public interests.

1.26 "Development Standards" means those development standards, requirements, limitations and provisions, including, without limitation, height, density, setback, sideyards, lot sizes, and other zoning standards incorporated into PD-32.

1.27 "Director" means the Director of Planning and Building of the City.

1.28 "Discretionary Action" or "Discretionary Approval" means an action which requires the exercise of judgment, deliberation or discretion on the part of City, including any City Agency, in the process of approving or disapproving a particular activity, as distinguished from an activity which merely requires a City Agency to determine whether there has been compliance with applicable statutes, ordinances, regulations or requirements.

1.29 "Distribution" shall have the meaning set forth in PD-32.

1.30 "Douglas Park" or "Douglas Park Project" means the Development of the Property and the City Parcel as contemplated by this Agreement.

1.31 "Effective Date" means the date this Agreement, fully executed by the Parties, is recorded in the office of the Recorder of Los Angeles County.

1.32 "Enabling Ordinance" means Ordinance C-6533 §1 adopted by the City Council on October 4, 1988, which established Chapter 21.29 of the Code, which authorizes and enables the City to enter into development agreements in accordance with the Development Agreement Act.

1.33 "Environmental Impact Report" means the detailed environmental impact document prepared pursuant to California Public Resources Code section 21000 *et seq.* covering the Project and assigned State Clearinghouse Number 2001051048.

1.34 "Floor Area" shall have the meaning set forth in PD-32.

1.35 "General Plan" means the General Plan of the City of Long Beach.

1.36 "Housing Districts" means Subareas 1A, 1B, 2, 3, 4, 5 and 6, as defined by the Development Standards.

1.37 "Impact Fees" means impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact fees or charges imposed on and in connection with new development by the City pursuant to rules, regulations, ordinances and policies of the City, as set forth in Exhibit "I," attached hereto. Impact Fees do not include (i) Processing Fees and Charges, or (ii) City-wide fees or charges of general applicability, provided that such City-wide fees or charges are not imposed on impacts of new development.

1.38 "Inspections" means all field inspections and reviews by City Agencies during the course of construction of the Project and the processing of certificates of occupancy (permanent or temporary).

1.39 "Lakewood Boulevard Landscape Improvements" means those landscaping improvements installed or to be installed pursuant to that certain Covenant And Agreement between Company and the City, which is being recorded concurrently with this Agreement and is attached as Exhibit "G" hereto.

1.40 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, guidelines and official policies of the City in force as of the Effective Date governing the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction guidelines, standards and specifications applicable to the Development of the Property. "Land Use Regulations" includes, without limitation, the General Plan, PD-32 (including the Development Standards), the Design Guidelines, and the Impact Fees. Notwithstanding the language of this Section or any other language in this Agreement, all duly adopted codes, regulations, specifications and standards regarding the initial design and construction prior to acceptance of Public Improvement Facilities, if any, shall be those that are in effect at the time the plans for such

Public Improvement Facilities are being processed for approval and/or under construction. In any event, the term "Land Use Regulations" does not refer to or include any City ordinance, resolution, code, rule, regulation, or official policy governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; and

(e) the exercise of the power of eminent domain.

1.41 "Liabilities" means all claims, causes of action, liabilities, losses, damages (including, without limitation, penalties, fines and monetary sanctions), expenses, charges, or costs of whatsoever character, nature and kind, including reasonable attorneys' fees and costs incurred by the indemnified Party with respect to counsel of its choice.

1.42 "Litigation" means any legal action instituted by any third party challenging any aspect of this Agreement or the Project Approvals, including, without limitation, the adoption, validity or application of any provision of this Agreement, or the Project's compliance with all applicable federal and state prevailing wage standards, including the requirements of California Labor Code section 1720 *et seq*.

1.43 "Ministerial Permits and Approvals" means the non-discretionary permits, approvals, plans, Inspections, certificates, documents, licenses, and all other non-discretionary actions required to be taken by the City in order for Company to implement, develop and construct the Project, including, without limitation, building permits, public works permits, grading permits, encroachment permits, permanent certificates of occupancy, and other similar permits and approvals which are required by the Code to implement the Project in accordance

with the Conditions of Approval and the Development Requirements. Ministerial Permits and Approvals shall not include any Discretionary Actions.

1.44 "Mitigation Monitoring Program" means the mitigation monitoring program adopted in connection with the City's approval of the Project Approvals and the certification of the Environmental Impact Report.

1.45 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or a lender under any other like security-device, and their successors and assigns.

1.46 "On-Site Project Infrastructure Phasing Plan" means the phasing of Project Infrastructure in a manner that encourages and supports the development contemplated by this Agreement, including, without limitation, the job-creating commercial uses planned for Douglas Park, as more fully described and depicted in Exhibits "E-1," "E-2," and "H." Such phasing is tied to residential development within the Project to ensure, among other matters, that infrastructure necessary to allow job-creating development within the Commercial Districts will be in place concurrently with the completion of various portions of the residential development within the Housing Districts at Douglas Park and that certain public components of the Project, including the Parks and Recreational Open Space, are completed and available for use as the residential portions of the Project progress. Together with Exhibits "H," "E-1," and "E-2," the On-Site Project Infrastructure Phasing Plan identifies and describes the following six (6) phases of Project Infrastructure, which are further described in Section 2.4.2: Phase 1, which consists of the Phase 1 On-Site Roadway Infrastructure shown on Exhibit "E-1", Park A, Park B, the Private Recreation Area, Segment 1 of the Bike Path, and the Lakewood Boulevard Landscape Improvements; Phase 2, which consists of the Phase 2 On-Site Roadway Infrastructure shown on Exhibit "E-1"; Phase 3, which consists of the Phase 3 On-Site Roadway Infrastructure shown on Exhibit "E-1" and Segments 4 and 5 of the Bike Path; Phase 4, which consists of Park D and Segment 3 of the Bike Path; Phase 5, which consists of Park C, the Pedestrian Easements / View

Corridors, and Segment 2 of the Bike Path; and the Enclave Phase, which consists of the Enclave Phase On-Site Roadway Infrastructure shown on Exhibit "E-1".

1.47 "On-Site Roadway Infrastructure" means the wet utilities (i.e., water, sewer and storm drainage) and dry utilities (i.e., conduits for telephone, electric, gas and cable), streets, traffic signage, traffic control devices, street lighting, sidewalks, and parkway landscaping, divided among the following four phases: Phase 1 On-Site Roadway Infrastructure, Phase 2 On-Site Roadway Infrastructure, Phase 3 On-Site Roadway Infrastructure, and Enclave Phase On-Site Roadway Infrastructure, as further described and depicted in the On-Site Project Infrastructure Phasing Plan attached hereto as Exhibit "E-1" and the Performance Trigger Summary attached hereto as Exhibit "H," but excluding any Transportation Improvements.

1.48 "Parks" means Park A, Park B, Park C and Park D, which shall be made available and open for public use, as more fully described and depicted in Exhibits "E-1" and "E-2."

1.49 "Parks and Recreational Open Space" means the Parks, the Private Recreation Area, Segments 1, 2, 3, 4 and 5 of the Bike Path, and the Pedestrian Easements / View Corridors, as more fully described and depicted in Exhibits "E-1" and "E-2."

1.50 "Parties" means collectively Company and City.

1.51 "Party" means any one of Company or City.

1.52 "Peak Hour" means the one-hour between the hours of 3:00 p.m. and 7:00 p.m. that exhibits the highest combination volume of Project and ambient traffic.

1.53 "Pedestrian Easements / View Corridors" means the two (2) pedestrian easements and view corridors, which shall be available and open for public use, described and depicted in Exhibits "E-1" and "E-2" and in the Development Standards.

1.54 "Planning Commission" means the Planning Commission of the City and the planning agency of the City pursuant to section 65867 of the Development Agreement Act.

1.55 "Planned Development District No. 32" or "PD-32" means Ordinance C-_____ _____, attached hereto as Exhibit "D," and the land use, development and other provisions contained therein, including without limitation, the Development Standards.

1.56 "Private Recreation Area" means that area adjacent and contiguous to Park B, as described and depicted in Section 8.25, Exhibits "E-1" and "E-2," and the Development Standards, that shall be reserved as private open space.

1.57 "Processing Fees and Charges" means all current and future processing fees and charges required by the City in connection with the Development of the Project, and which apply City-wide, including, but not limited to, fees for Ministerial Permits and Approvals, land use applications, tract or parcel maps, lot line adjustments, air rights lots, street vacations, certificates of occupancy and other similar permits. Processing Fees and Charges shall not include Impact Fees.

1.58 "Project" means the Development of the Property and the City Parcel as contemplated by Section 2.4 of this Agreement.

1.59 "Project Approvals" means the Discretionary Approvals for the Project that were approved by the City prior to or concurrently with the approval of the ordinance approving the execution of this Agreement, which include: (1) General Plan Amendment No. _____; (2) General Plan Amendment No. __; (3) General Plan Amendment No. _; (4) Vesting Tentative Tract Map No. 61252; (5) Ordinance No. C-_____ (PD-32, including the Development Standards); (6) Ordinance No. C-_____ (revisions to PD-19); (7) Ordinance No. C-_____ (revisions to Noise District Map in Chapter 8.80.160 of the Code); (8) Ordinance No. C-_____ (addition of "PD-32 – Douglas Park" to Chapter 21.37.020 of the Code); (9) approval of the Design Guidelines; and (10) certification of the Environmental Impact Report, including the Mitigation Monitoring Program. References to the Project Approvals herein also shall be deemed to refer to and to incorporate the Development Requirements and Conditions of Approval imposed in connection with the Project Approvals.

1.60 "Project Infrastructure" means the On-Site Roadway Infrastructure, the Parks and Recreational Open Space, the Transportation Improvements, and the Lakewood Boulevard Landscape Improvements as each of the foregoing are described and depicted in one or more of the following exhibits: On-Site Project Infrastructure Phasing Plan attached hereto as Exhibit "E-1," the Park and Recreational Open Space Summary attached hereto as Exhibit "E-2," the Transportation Improvements and Phasing Program attached hereto as Exhibit "F," the Covenant And Agreement Regarding Lakewood Boulevard Landscape Improvements attached hereto as Exhibit "G," and the Performance Trigger Summary attached hereto as Exhibit "H."

1.61 "Property" means the real property legally described in Exhibit "A" and located in the area shown as the Long Beach Portion of the Project Site on the Project Vicinity Map attached as Exhibit "B" to this Agreement.

1.62 "Public Financing District" means any assessment district, Mello-Roos or other special tax district, infrastructure financing district, maintenance district or other similar taxing district established or operated by the City.

1.63 "Public Improvement Facilities" means any Project Infrastructure improvement to be dedicated or made available to a governmental entity or public utility for public use.

1.64 "Reserved Powers" means the rights and authority excepted from this Agreement's restrictions on the City's police powers and which are instead reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date with respect to Development of the Project that may be in conflict with the Land Use Regulations, but: (1) prevent or remedy conditions which the City has found to be injurious or detrimental to the public health or safety; (2) are California Building Standards Codes; (3) are necessary to comply with state or federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date) or to comply with a court order or judgment of a state or federal court; (4) are agreed to or consented to by Company; or (5) are City-wide fees or charges of general applicability provided that such City-wide fees or charges

are not fees or charges imposed on impacts of new development in violation of the express limitations provided by this Agreement.

1.65 "School Agreement" means that certain Agreement by and between Boeing Realty Corporation, an affiliate of the Company, and the Long Beach Unified School District dated February 23, 2004.

1.66 "Section" means the indicated number section or subsection of this Agreement.

1.67 "Subsequent Discretionary Project Approvals" means all Discretionary Actions or Discretionary Approvals applicable to the Project or the Property and that are approved by the City after the Effective Date.

1.68 "Subsequent Land Use Regulations" means any change in or addition to the Land Use Regulations adopted and effective after the Effective Date, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, adopted or becoming effective after the Effective Date, including, without limitation, any such change by means of an ordinance, City Charter amendment, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the Mayor, City Council, Planning Commission or any other City Agency, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which conflicts with the rights granted to Company by this Agreement.

1.69 "Term" means the period of time from the Effective Date until the termination of this Agreement as provided in Section 4 of this Agreement.

1.70 "Transportation Improvements" means those transportation-related improvements described in the Transportation Improvements and Phasing Program, attached hereto as Exhibit "F," to this Agreement, and in the Environmental Impact Report, which are required to service the Project and the Project area.

1.71 "Warehouse" shall have the meaning set forth in PD-32.

2. RECITALS OF PREMISES, PURPOSE AND INTENT

2.1 State Enabling Statute.

To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act, which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

> "The Legislature finds and declares that:
>
> "(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.
>
> "(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development."

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties.

2.2 City Procedures and Actions.

Pursuant to the authorization set forth in section 65865 of the Development Act, City has adopted rules and regulations establishing procedures and requirements for development

agreements. Such rules and regulations are set forth in Chapter 21.29, sections 21.29.010 through 21.29.090 of the Code.

In accordance with Chapter 21.29 of the Code, City has undertaken the necessary proceedings, has found and determined that this Agreement is consistent with the General Plan, and has adopted Ordinance No. _____ approving this Agreement, which Ordinance becomes effective on _____, 200_____.

2.3 The Property.

Company is the owner of approximately two hundred thirty-eight (238) acres located in City, as more particularly described in Exhibit "A" attached hereto and as shown on the Vicinity Map attached hereto as Exhibit "B".

2.4 The Project.

It is the Company's intent to subdivide and develop Douglas Park as described below.

2.4.1 Description of the Major Components of the Project. As described by Planned Development District No. 32, Company seeks to develop Douglas Park as a mixed-use complex comprising eleven (11) Zoning Districts: the seven (7) Housing Districts, the three (3) Commercial Districts, and one (1) Park District (Subarea 9). Development will consist of the major components described below and set forth in more detail in Exhibits "C" and "D" attached hereto:

(a) A maximum of one thousand four hundred (1,400) residential dwelling units may be constructed in accordance with the conditions set forth in the Project Approvals. Subareas 1A, 1B, 2, 3, 4, 5, 6 and 9 contain approximately one hundred one (101) gross acres, including parks and roads. Not more than four hundred (400) for-rent multifamily units may be developed within the Project, and such units shall be located within Subarea 1B. The contemplated number of unit

types permitted and the distribution thereof within these Subareas is set forth in the Development Standards and summarized below:

Subareas

Subarea	Applicable Code Zoning District	Use Classification
Subarea 1A	R-4-N	High-density Multiple Residential
Subarea 1B	R-4-N	High-density Multiple Residential
Subarea 2	R-3-T	Multi-family Residential, Townhouse
Subarea 3	R-4-R	Moderate-density Multiple Residential
Subarea 4	R-1-M-3500	Single-family Residential – detached unit with Alley (35' x 100' lots)
	R-1-M-3500	Single-family Residential – detached unit with Alley (45' x 100' lots)
Subarea 5	R-4-R	Moderate-density Multiple Residential
Subarea 6	R-4-R	Moderate-density Multiple Residential
Subarea 7	N/A	Office and "Main Street" Commercial, Hotel, Light Industrial, Aviation-related Uses
Subarea 8A	N/A	Office, Commercial, Light Industrial
Subarea 8B	N/A	Continued Aircraft Manufacturing Support, Light Industrial
Subarea 9	P	Parks and Private Recreation Area

(b) A maximum of three million three hundred thousand (3,300,000) square feet of Floor Area within Subareas 7, 8A and 8B for commercial uses (which maximum shall be reduced by any Floor Area devoted to retail uses in Subarea 1B as described in Section 2.4.1(d), below). Floor Area within Subarea 7 will be devoted to those uses set forth in the Development Standards, constructed and operated in accordance with and subject to the conditions set forth in the Project Approvals. Manufacturing uses are not permitted in Subarea 7. Floor Area within Subarea 8A may be devoted to all uses permitted in Subarea 7, all light industrial uses, and manufacturing uses constructed and operated in

accordance with and subject to the conditions set forth in the Project Approvals. Floor Area within Subarea 8B may be devoted to all uses permitted in Subarea 8A, and, subject to the termination provisions contained in PD-32, those uses permitted within Subarea 8B as of the Effective Date. Warehouse and Distribution uses are permitted within Subareas 7, 8A and 8B, but only as Accessory Uses, which shall not, at any time, exceed fifty (50) percent of the total Floor Area located on the legal lot or parcel containing such Accessory Use within Subareas 7, 8A and 8B. No housing of any kind will be permitted in Subareas 7, 8A and 8B. The total commercial Floor Area developed pursuant to this Agreement within the City of Long Beach shall be reduced by each square foot of Development that is actually developed within the City of Lakewood in reliance upon the Environmental Impact Report, including any addenda thereto; and

(c) A maximum of four hundred (400) hotel guest rooms or suites of rooms within Subarea 7, constructed in accordance with and subject to the conditions set forth in the Project Approvals; and

(d) A maximum of two hundred thousand (200,000) square feet of Floor Area devoted to retail uses within the Property, with retail uses allowed only in Subarea 7 and the portion of Subarea 1B designated as the Mixed-Use Overlay Zone on Figure 4 of the Development Standards. The total of any Floor Area devoted to any such retail uses and any Floor Area devoted to commercial uses pursuant to Section 2.4.1(b) shall not exceed three million three hundred thousand (3,300,000) square feet of Floor Area; and

(e) Public and private improvements, including major road improvements and other Project Infrastructure as described in Section 2.4.2 and Exhibits “E-1,” “E-2,” “F,” “G,” and “H”; and

(f) As more particularly described on Exhibits "E-1" and "E-2" attached hereto, approximately thirteen (13) gross acres of Parks and Recreational Open Space within the Project, including (i) nine and three tenths (9.3) gross acres of publicly owned and/or publicly accessible park space located north of "F" Street, including Park A (containing approximately four tenths (0.4) gross acres), Park B (containing approximately two (2) gross acres), Park C (containing approximately one and one tenth (1.1) gross acres), and Park D (containing approximately five and eight tenths (5.8) gross acres); (ii) Segments 1, 2, 3, and 4 of the Bike Path (containing approximately two and two tenths (2.2) gross acres); (iii) the Pedestrian Easements / View Corridors (containing approximately three tenths (0.3) gross acres); and (iv) the Private Recreation Area (containing approximately one and two tenths (1.2) gross acres of private open space) and other areas elsewhere in the Project at Company's discretion, where access may be limited to residents of Douglas Park.

In connection with the Development of the Project, Company and City also contemplate construction by Company of Segment 5 of the Bike Path adjacent to "F" Street in the City of Lakewood, consisting of approximately one-half (0.5) gross acres, subject to the approval of the City of Lakewood, which approval Company shall use reasonable best efforts to obtain.

The major components described above are more fully described by and must comply with all requirements set forth in PD-32, which shall be construed together with this agreement. The requirements set forth in PD-32 and this Agreement are cumulative and the requirements of both PD-32 and this Agreement shall be met.

2.4.2 Description of Major Project Infrastructure Improvements to be Included Within the Scope of this Agreement; On-Site Project Infrastructure Phasing Plan Requirements. The Transportation Improvements which are a part of the Project are described

in the Transportation Improvements and Phasing Program attached as Exhibit "F" hereto and shall be constructed or implemented in accordance with the timing set forth in Exhibit "F". The Park and Recreational Open Space improvements which are a part of the Project are described in the Park and Recreational Open Space Summary, which is Exhibit "E-2" hereto. The Lakewood Boulevard Landscape Improvements which are a part of the Project are those landscaping improvements which have been or will be installed pursuant to Exhibit "G" hereto. The other major on-site Project Infrastructure improvements are described in the On-Site Project Infrastructure Phasing Plan, which is Exhibit "E-1" hereto. Consistent with Exhibits "E-1," "E-2," "G" and "H" hereto, Project Infrastructure (excluding the Transportation Improvements to be constructed or implemented in accordance with Exhibit "F") shall be constructed in the following phases:

(a) Phase 1: The "Phase 1 Project Infrastructure" shall consist of the Phase 1 On-Site Roadway Infrastructure shown on Exhibit "E-1", Park A, Park B, the Private Recreation Area, Segment 1 of the Bike Path, and the Lakewood Boulevard Landscape Improvements. All Phase 1 Project Infrastructure must be completed in accordance with all City-approved plans and specifications, and, where applicable, inspected and accepted by the City prior to issuance of the first (1st) Certificate of Occupancy for any residential unit within the Project (excluding model home units, which may obtain early certificates of occupancy for purposes of reasonable pre-sale marketing activities);

(b) Phase 2: The "Phase 2 Project Infrastructure" shall consist of the Phase 2 On-Site Roadway Infrastructure shown on Exhibit "E-1." All Phase 2 Project Infrastructure must be completed in accordance with all City-approved plans and specifications, and, where applicable, inspected and accepted by the City prior to the earlier of (i) issuance of the seven hundred and first (701st) Certificate of Occupancy for a residential unit within the Project or (ii) issuance of a Certificate of Occupancy for any units which would allow occupancy of more than

fifty percent (50%) of the total residential acreage (net of Parks and Recreational Open Space and streets) contained within the Housing Districts;

(c) Phase 3: The "Phase 3 Project Infrastructure" shall consist of the Phase 3 On-Site Roadway Infrastructure shown on Exhibit "E-1" (i.e., completion of "F" Street, defined as extension and connection to the intersection of Cover Street and Paramount Boulevard) and Segments 4 and 5 of the Bike Path (Segment 5 being located in and subject to the approval of the City of Lakewood). All Phase 3 Project Infrastructure must be completed in accordance with all City-approved plans and specifications, and, where applicable, inspected and accepted by the City, upon the sooner of (i) delivery to the City of a fully improved Park D, or (ii) the third anniversary of the issuance of a Certificate of Occupancy for the seven hundred and first (701st) residential unit within the Project;

(d) Phase 4. The "Phase 4 Project Infrastructure" shall consist of Park D and Segment 3 of the Bike Path. All Phase 4 Project Infrastructure must be completed in accordance with all City-approved plans and specifications, and, where applicable, inspected and accepted by the City prior to the earlier of (i) issuance of the seven hundred and first (701st) Certificate of Occupancy for a residential unit within the Project or (ii) five (5) years after acceptance by the City of the Phase 1 On-Site Roadway Infrastructure;

(e) Phase 5. The "Phase 5 Project Infrastructure" shall consist of Park C, the Pedestrian Easements / View Corridors, and Segment 2 of the Bike Path. With the exception of the Pedestrian Easements / View Corridors, all Phase 5 Project Infrastructure must be completed in accordance with all City-approved plans and specifications, and, where applicable, inspected and accepted by the City prior to the sooner of (i) the earlier of (x) issuance of a Certificate of Occupancy for the nine hundred and first (901st) residential unit within the Project or (y) the issuance of a Certificate of Occupancy for any units which would allow occupancy of more than sixty five percent (65%) of the total residential acreage (net of Parks and Recreational Open Space and streets) contained within the Housing Districts or (ii) issuance of the first (1st)

Certificate of Occupancy for a residential unit in Subarea 5. The Pedestrian Easements / View Corridors shall be completed in accordance with all City-approved plans and specifications, and, if applicable, inspected and accepted by the City prior to the issuance of the first (1st) Certificate of Occupancy in Subarea 5.

(f) Enclave Phase. The "Enclave Phase Infrastructure" shall consist of the Enclave Phase On-Site Roadway Infrastructure shown on Exhibit "E-1." All Enclave Phase Infrastructure must be completed in accordance with all City-approved plans and specifications, and, where applicable, inspected and accepted by the City if, as and when uses currently permitted within Subarea 8B are discontinued.

2.4.3 Maintenance of Landscaping and Other Improvements; Master Declaration; Use Restrictions. The Parties agree that, following completion of each of the following improvements and notwithstanding public ownership of all or a part thereof, the Company, and its successors and assigns, shall be responsible for all costs of repair, replacement, maintenance and other like costs (collectively, "Maintenance") required in connection with the Lakewood Boulevard Landscape Improvements, all parkway and median landscaping, the Parks, and the Pedestrian Easements / View Corridors (collectively, the "Privately Maintained Publicly Owned Infrastructure"); provided, however, that the City shall provide, at no cost to Company, all necessary irrigation water (which may be reclaimed water) and power to the irrigation controllers for the Lakewood Boulevard Landscape Improvements, all parkway and median landscaping within the Project and all Parks within the Project. City shall also maintain the Bike Paths and sidewalks after construction by the Company and acceptance by the City. Prior to the sale of any portion of the Property by the Company, or issuance of any certificates of occupancy within the Project, whichever occurs first, Company shall submit to the City for its approval, which shall not be unreasonably withheld, conditioned or delayed (and, following such approval, shall record against the Property), a Master Declaration of Covenants, Conditions and Restrictions (the "CC&Rs"), which shall be binding upon the Company and all successors and

assigns owning all or any portion of the Project (collectively the "Property Owners"), and which shall (a) obligate those parties to either perform all Maintenance in accordance with City-required standards set forth in the CC&Rs or reimburse the City, as Company shall elect, for all costs of such Maintenance of the Privately Maintained Publicly Owned Infrastructure, which election shall be made by the Company prior to issuance of the first Certificate of Occupancy for the Project, (b) provide that those portions of the CC&Rs described in this Section 2.4.3 shall not be modified without the consent of the City, which shall not be unreasonably withheld, conditioned or delayed, (c) provide that the City shall have the direct right to enforce the obligations expressed to be for the City's benefit in the event of the failure of the Property Owners to do so, and (d) provide for indemnification of the City from any such Maintenance costs or expenses or any Liabilities arising from the manner of performance of such Maintenance by the Property Owners (or an association of such owners formed for the purpose, *inter alia*, of performing such Maintenance (the "Association")) or any act or omission of the Property Owners or the Association in connection with the performance of such Maintenance. The CC&Rs shall also (i) restrict the Housing Districts to development of and use as for-sale housing, except as otherwise permitted in Subarea 1B under Section 2.4.1(a), and prohibit any developer of such portion of the Project or any successor owner of all or substantially all of a development project within such portion of the Project from rental of such housing prior to the initial sale of that housing pursuant to a final subdivision public report and, after the initial sale, further prohibiting, for a period of at least one (1) year after such initial sale, any rental of such housing, (ii) set forth in full the Airport Compatibility Measures language set forth in Section 8.32, (iii) require that all Privately Maintained Publicly Owned Infrastructure remain open to the public in perpetuity, and (iv) contain use restrictions with respect to certain uses within the Project which Company and City consider to be undesirable or inappropriate for the Project, in each case in a form and substance approved by the Company and City, which approvals shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything in this Agreement

which is or appears to the contrary, all alleys within the Project shall be privately constructed, privately owned and privately maintained and City shall have no capital or Maintenance obligation with respect thereto.

2.4.4 Dedication of Land for Public Purposes. Provisions for the dedication of land for public purposes are included within the description of Transportation Improvements on Exhibit "F" hereto and within the description of the other major Project Infrastructure improvements set forth in the On-Site Project Infrastructure Phasing Plan, which is Exhibit "E-1" hereto, including the Park and Recreational Open Space requirements described in Exhibit "E-2" and Sections 2.4.1 above and 8.25 below.

2.4.5 Maximum Height of Project Buildings. The maximum height of each of the Project's proposed buildings is set forth in PD-32. However, proposed building heights must in any event and in all cases not exceed those limits established by the Federal Aviation Administration's regulations in which building heights are measured from mean sea level and are measured to the highest point of the building, including antennas and appurtenances.

2.5 Public Objectives.

In accordance with the legislative findings set forth in section 65864 of the Development Agreement Act, City wishes to attain certain public objectives that will be furthered by this Agreement, including the orderly development of the Property in accordance with the Land Use Regulations and the Project Approvals. Moreover, this Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted. Additionally, although Development in accordance with this Agreement will restrain the City's land use and other relevant police powers to the extent expressly set forth herein, the Agreement will provide City with sufficient Reserved Powers during the Term hereof to remain responsible and

accountable to its residents. In exchange for these and other benefits to the City, Company will receive assurances that the Project may be developed during the Term of this Agreement in accordance with the Land Use Regulations and the Project Approvals, subject to the terms and conditions of this Agreement and the Conditions of Approval.

The Parties believe that such orderly Development of the Project will provide many benefits to the Parties, including without limitation the following:

2.5.1 Comprehensive Planning Objectives. The Development of the Property pursuant to this Agreement will facilitate the implementation of the General Plan, and will further the comprehensive planning objectives contained within the General Plan, including the following:

(a) Maintaining and enhancing major employment centers, such as the Douglas Park Project area;

(b) Expanding and attracting new business to the City;

(c) Providing for construction of new housing along major arterial corridors by removing underutilized and deteriorated commercial and industrial structures and recycling these old commercial and industrial properties by developing carefully designed, quality residential uses that promote better living conditions, promote access to employment centers, and protect established neighborhoods from intrusion of higher density housing;

(d) Locating new multi-family housing in proximity to growing employment centers to decrease travel time, reduce traffic congestion, lessen energy consumption and improve air quality;

(e) Assisting in improving the quality and availability of neighborhood housing and in building a strong network of healthy neighborhoods;

(f) Redirecting growth to major employment/activity centers, such as the Douglas Park Project area;

(g) Developing a well-balanced community offering planned and protected residential districts, an adequate park and recreation system for all future residents, well-planned commercial districts, and a coordinated circulation system for fast, safe, and efficient movement of people and commodities;

(h) Providing usable open space tailored to Project-generated recreational demands that would otherwise be placed on public open space and recreation resources;

(i) Improving the urban environment in order to make Long Beach a more pleasant place to live, work, play and raise a family;

(j) Incorporating open space to provide a contrast to, and relief from, the tensions associated with urban living;

(k) Maximizing the development, economic, and job-creating potential of under-utilized properties zoned for commercial and manufacturing uses.

2.5.2 City Development Objectives. The public benefits to be received as a result of the development of the Project through this Agreement include, among others:

(a) Development of a major business center within the City providing opportunities for temporary employment during construction for up to an estimated three thousand eight hundred (3,800) persons and, at build out, permanent local long-term employment for up to an estimated eleven thousand (11,000) persons with an estimated annual direct and indirect payroll of over one billion dollars ($1,000,000,000);

(b) Construction of major Project Infrastructure improvements in accordance with and as described in Exhibits “E-1,” “E-2,” “G” and “H,” which will ensure that infrastructure necessary to allow job-creating development within the Commercial Districts will be in place concurrently with the completion of various portions of the residential development within the Housing Districts;

(c) Construction of the Transportation Improvements in accordance with and as described in Exhibit "F", which will mitigate, to the extent feasible, the traffic impacts of the Project;

(d) Construction and maintenance of the Lakewood Boulevard Landscape Improvements, which will beautify one of the City's most important arterials;

(e) Mitigation (in excess of statutory requirements) of the impacts on the schools within the Long Beach Unified School District through the School Agreement;

(f) Contribution of three million dollars ($3,000,000) in fees towards the affordable housing needs of the City;

(g) Meeting the open space, park and recreation needs of the future residents of the Project through the payment of the park and recreation Impact Fees, as described in Exhibit "I" hereto, in addition to the provision of a combination of on-site open space and park and recreation facilities including the open space and park facilities described in Section 8.25 below and in Exhibit "E-2" attached hereto;

(h) Protection of the present and future free and unrestricted use of Long Beach Airport – Daugherty Field as a public and commercial use airport, and protection of the City from potential exposure to airport noise-related litigation initiated by future residents of the Project through the Airspace And Avigation Easement and the location of residential uses in areas of the Project site least impacted by airport noise;

(i) Assurance that development of the Project will proceed in accordance with a master plan which was the result of a comprehensive and coordinated planning process by and among Company, City and the community in

which private and public goals, objectives and interests were thoughtfully integrated and resolved in an optimal fashion.

2.6 Company Objectives.

In accordance with the legislative findings set forth in section 65864 of the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, Company wishes to obtain reasonable assurances that, following receipt of all necessary discretionary approvals for the Project (i.e., the Project Approvals and the Subsequent Discretionary Project Approvals), Company will be able to develop the Project in accordance with the Land Use Regulations and with the Project Approvals. Because of the nature of the Project and the type and extent of the Transportation Improvements and the other major Project Infrastructure improvements to be provided by the Project, the Development of the Project will take a long period of time to complete. The decision by the Company to commence the Project is based on expectations of proceeding with the Project to completion. In the absence of this Agreement, Company would have no assurance that it can complete the Project. For any number of currently foreseeable and unforeseeable reasons, including, without limitation, regional traffic and related impacts (such as impacts on air quality) resulting from development outside the jurisdiction of City, pressures on the City could be created (a) to halt the Project at a point short of total build-out, (b) to defer or delay completion of the Project, or (c) to apply new rules, regulations or official policies to the Project inconsistent with this Agreement in such a manner as to significantly increase the cost or reduce the size of the Project. The potential loss of anticipated revenue associated with these development risks and uncertainties would, in the absence of this Agreement, deter and discourage Company from making a long-term commitment to the implementation of the Project. In addition, the costs of the Transportation Improvements, the Lakewood Boulevard Landscape Improvements, the other Project Infrastructure improvements and the school facilities described in the School Agreement to be funded by Company directly or indirectly will be in the millions of dollars and will be incurred

by Company well in advance of the completion of all of the private income-producing components of the Project which provide the economic return required to justify and offset the investment in such Project Infrastructure improvements. Accordingly, Company cannot prudently continue the development of the Project and such associated Transportation Improvements, other Project Infrastructure improvements and payment of school fees without reasonable assurance that, subject to the terms of this Agreement and the Reserved Powers, it will be able to complete the Project in accordance with the Project Approvals and the Land Use Regulations, and it is only the assurance of the ability to complete the private income-producing components of the Project in accordance with the Project Approvals and the Land Use Regulations that provides the inducement to Company to agree to commit the land and financial resources represented by the Transportation Improvements, the Lakewood Boulevard Landscape Improvements, the other Project Infrastructure improvements, the Housing Payment (as defined in Section 8.30 of this Agreement), and the payment of Impact Fees and school fees.

2.7 Applicability of the Agreement. This Agreement does not: (a) grant density, intensity or uses in excess of that otherwise established in the Project Approvals and the Land Use Regulations; (b) supersede, nullify or amend any condition imposed in the Project Approvals; (c) eliminate City discretion with respect to future Discretionary Actions relating to Douglas Park if such Discretionary Actions are initiated and submitted by Company or any other owner of the Property or any portion thereof after the Effective Date; (d) guarantee that Company will receive any profits from the Project; or (e) amend the City's General Plan. This Agreement has a fixed Term and is not permanent.

3. AGREEMENT AND ASSURANCES

3.1 Agreement and Assurances on the Part of Company.

In consideration of the covenants and agreements of City set forth herein, and in consideration of City's assurances with respect to Company's right to complete the Project set forth in Section 3.2 below, Company hereby agrees as follows:

3.1.1 Project Development. Company agrees that it will use commercially reasonable efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing Company's business decisions concerning timing of the commencement or continuation of development, to develop the Project in accordance with the terms and conditions of this Agreement, with the Conditions of Approval and with the Land Use Regulations, including:

3.1.1.1 As more fully described in PD-32 and Section 2.4.1 above, an integrated mixed use development comprised of housing and commercial uses.

3.1.1.2 The Transportation Improvements identified in Exhibit "F", the park and recreational open space improvements described in Exhibit "E-2", the Lakewood Boulevard Landscape Improvements described in Exhibit "G", and the other Project Infrastructure improvements described in Exhibit "E-1", in each case in accordance with the On-Site Project Infrastructure Phasing Plan, the Transportation Improvements and Phasing Program attached as Exhibit "F", the Performance Trigger Summary set forth in Exhibit "H", and the requirements of this Agreement.

3.1.2 Timing of Development. The Parties acknowledge that Company cannot predict when or the rate at which the Project will be developed. Such decisions depend upon numerous factors which are not all within the control of Company, such as market orientation and demand, interest rates, absorption, availability of financing and other similar factors. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the intent of Company and City to hereby cure that defect by acknowledging and providing that, subject to the limitations expressly set forth in this Agreement, including the On-Site Project Infrastructure Phasing Plan, Company shall have the right to develop the Property in such order and at such rate and at such times as Company deems

appropriate within the exercise of its business judgment. City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement. Company will use commercially reasonable efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing its business decision, to develop the Project in accordance with the provisions and conditions of this Agreement, the Project Approvals and the Land Use Regulations. Nothing in this Section is intended to alter the standard durational limits of any applicable permits issued to Company.

3.2 Agreement and Assurances on the Part of City.

In order to effectuate the premises, purposes and intentions set forth in Section 2 above, and as an inducement for Company to obligate itself to carry out the covenants and conditions set forth in this Agreement, including the preceding Section 3.1 of this Agreement, City hereby agrees that Company shall have a vested right to carry out and complete the entire Project, as specifically described and set forth in this Agreement, subject to the terms and conditions of this Agreement, the Project Approvals, the Conditions of Approval and the Land Use Regulations. In furtherance of such agreement and assurance, and pursuant to the authority and provisions set forth in the Development Agreement Act and Chapter 21.29 of the Code, City, in entering into this Agreement, hereby agrees and acknowledges that:

3.2.1 Entitlement to Develop.

3.2.1.1 Project Entitlement. Company has the vested right, to the fullest extent allowed under the Development Agreement Act, to develop the Project, in accordance with and subject to the Project Approvals, the Conditions of Approval, and the Land Use Regulations without any further Discretionary Action being obtained from the City other than any applicable Subsequent Discretionary Project Approvals, and City finds and certifies that the Project is consistent with the General Plan and the applicable zoning regulations. This Agreement shall vest the right to develop the Property with the permitted uses of land, and with the density and intensity of uses specifically set forth in the Project Approvals, which includes,

without limitation, the major components of the Project described in Section 2.4.1 of this Agreement.

3.2.1.2 Nonapplication of Subsequent Land Use Regulations. Except as otherwise provided by this Agreement with respect to the Reserved Powers, any Subsequent Land Use Regulations shall not be applied by City to the Project.

3.2.1.3 Changes in California Building Standards Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time in the California Building Standards Codes pursuant to the Reserved Powers.

3.2.1.4 Changes Mandated by Federal or State Law. Notwithstanding any provision of this Agreement to the contrary, the Property shall also be subject to subsequently enacted state or federal laws or regulations which preempt local regulations, or mandate the adoption of local regulations, or are in conflict with local regulations or with the Project Approvals and this Agreement. As provided in section 65869.5 of the Development Agreement Act, in the event that state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City or Company shall provide the other Party with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of local regulations or this Agreement. Promptly thereafter City and Company shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City and Company will attempt to preserve the terms of this Agreement and the

rights of Company as derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, it shall have the right and responsibility to do so, and shall not have any liability to Company for doing so. City also agrees to process, in accordance with the provisions of Section 3.3 of this Agreement, Company's proposed changes to the Project that are necessary to comply with such federal or state law and that such proposed Project changes shall be conclusively deemed to be consistent with this Agreement without any further need for any amendment to this Agreement or any of its Exhibits.

3.2.1.5 Right to Remodel, Renovate, Rehabilitate, Repair, Rebuild or Replace. Company's vested rights under this Agreement shall include, without limitation, the right to remodel, renovate, rehabilitate, repair, rebuild or replace the Project or any portion thereof throughout the applicable Term for any reason including, without limitation, in the event of damage, destruction or obsolescence of the Project or any portion thereof, subject to the Land Use Regulations and the Reserved Powers. To the extent that all or any portion of the Project is remodeled, renovated, rehabilitated, repaired, rebuilt or replaced, Company may locate such reconstructed portion of the Project subject to the requirements of the Land Use Regulations, the Project Approvals and the Reserved Powers. Any Impact Fees related to such remodeled, renovated, rehabilitated, repaired, rebuilt, or replaced Project or portion thereof will be limited, under the terms of this Agreement, to the Impact Fees in effect as of the Effective Date increased by the percentage increase in the Consumer Price Index between the Effective Date and the date on which such Fees are payable. Notwithstanding the foregoing, Company reserves the right to protest or object to any Fees charged on any remodeled, renovated, rehabilitated, repaired, rebuilt or replaced Project or portion thereof based upon its rights under the then applicable law. Furthermore, notwithstanding anything to the contrary in this Section, the rights created under this Section 3.2.1.5 shall be limited to Company and any transferees of the Project succeeding to

the Company's rights under this Agreement pursuant to Section 8.16 and in any event shall not extend to any owner or tenant of any individual completed residential unit.

3.2.1.6 Health and Safety. In the event that any future public health or safety emergencies arise with respect to the Development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by the City in its discretion, to address such emergency in a way that does not have a material adverse impact on Development of the Property in accordance with the Project Approvals and the Land Use Regulations, and if the City determines, in its discretion, that it is not reasonably possible to so address such health or safety emergency, to select that option for addressing the situation which, in the City's discretion, minimizes, so far as reasonably possible, the impact on Development of the Property in accordance with the Project Approvals and the Land Use Regulations while still addressing such health or safety emergency in a manner acceptable to the City.

3.2.1.7 Agreed Changes and Other Reserved Powers. This Agreement shall not preclude application to the Project of rules, regulations, ordinances and officially adopted plans and policies in conflict with the Land Use Regulations or the Project Approvals where such additional rules, regulations, ordinances and officially adopted plans and policies (a) are mutually agreed to in writing by Company and City in accordance with the requirements of Section 8.10 of this Agreement or (b) result from the Reserved Powers.

3.2.2 Subsequent Discretionary Project Approvals; Consistent Subsequent Requirements. In accordance with California Government Code section 65865.2, City hereby agrees that it will not withhold or condition any Subsequent Discretionary Project Approval in a manner which would prevent Development of the Property for the uses and to the density or intensity of Development set forth in this Agreement, provided that Company reasonably and satisfactorily complies with all procedures, actions, payment of Processing Fees and Charges, conditions and criteria generally required of developers by City for processing applications for development, consistent with this Agreement. During the Term of this Agreement, City shall not

require Company to obtain any approvals or permits for the development of the Project in accordance with this Agreement other than those permits or approvals which are required by the Land Use Regulations and any other governmental requirements applicable to the Project in accordance with the terms of this Agreement. All Subsequent Discretionary Project Approvals implementing the Project shall be subject to the terms and conditions of this Agreement. Any Subsequent Discretionary Project Approval implementing the Project or any conditions, terms, restrictions and requirements of any such Subsequent Discretionary Project Approval implementing the Project, shall not prevent development of Douglas Park for the uses and to the maximum density or intensity of development set forth in this Agreement.

In accordance with Government Code section 65866, nothing in this Agreement shall prevent the City, in subsequent actions applicable to the Property, from applying new rules, regulations and policies which do not conflict with the Land Use Regulations applicable to the Property under this Agreement and such new rules, regulations and policies shall be applicable to the Property.

In consideration for the covenants of City set forth herein and the rights granted to the Company hereunder, Company agrees (a) that it shall not seek any Subsequent Discretionary Project Approvals for expansion of the Housing Districts or any increase in the intensity or density of the residential uses therein and (b) that it shall not seek to allow Warehouse and Distribution uses in the Project, other than as an Accessory Use as permitted under this Agreement. Company acknowledges that such actions would disrupt the carefully structured development balance set forth herein and would deprive the City of the benefits contemplated by this Agreement and that development balance.

3.2.3 Consistency with Land Use Regulations. City finds, based upon all information made available to City prior to or concurrently with the execution of this Agreement, that there are no Land Use Regulations that would prohibit or prevent the full completion and

occupancy of the Project in accordance with the uses, densities, Project design and heights incorporated and agreed to herein.

3.2.4 Time Period of Tentative Map. As provided in California Government Code section 66452.6, the term of Vesting Tentative Tract Map. No. 61252 (approved by the Planning Commission on _____, 2004) is hereby extended so that it will remain valid for the Term of this Agreement. In addition, notwithstanding any Condition of Approval or other provision of the Project Approvals which may provide to the contrary, every Project Approval shall remain valid for the Term of this Agreement.

3.2.5 Moratoria. In the event an ordinance, resolution or other measure is hereafter enacted, whether by action of City, by initiative, or otherwise, which affects the rate, timing, or sequencing of the Development of all or any part of Douglas Park, or implementation or construction of any Condition of Approval ("Moratorium"), City agrees that the changes imposed by such Moratorium shall not apply to Douglas Park or this Agreement, unless such changes are applied pursuant to the City's exercise of its Reserved Powers or other applicable provision of this Agreement, and, if applicable to Douglas Park, shall toll the Term for the period of time that such Moratorium actually delays the rate or timing or affects the sequencing of the Development of all or any part of Douglas Park. Company shall not request or, unless requested or permitted to do so by the City, support adoption of such Moratorium during the Term.

3.2.6 Standard City Services. The City agrees to provide generally applicable standard municipal services to the Project upon the same terms as provided elsewhere in the City; provided, however, the City does not guarantee any particular level of municipal service to Company or the Property.

3.2.7 Impact Fees. Impact Fees imposed by the City with respect to the Project during the Term of this Agreement shall be only those Impact Fees in force and effect as of the Effective Date. Impact Fees imposed by the City on the Project may not be increased in amount after the Effective Date. This Agreement shall not limit any impact fees, linkage fees, exaction,

assessments or fair share charges or other similar fees or charges imposed by other governmental entities and which the City is required to collect or assess pursuant to applicable law (e.g., school district impact fees pursuant to Government Code section 65995). The City acknowledges and finds that the Transportation Improvements identified in the Conditions of Approval that are to be implemented in connection with the Project provide regional mobility benefits beyond measured Project impacts or otherwise were contemplated by the nexus studies and/or master plans supporting the City's Traffic Impact Fees. The City further finds that the cost of implementing the Transportation Improvements exceeds the amount of Traffic Impact Fees that might otherwise be payable under Chapter 18.17 and Chapter 18.18 of the Code in connection with the Development. As a result of and in consideration for the implementation of such Transportation Improvements and the On-Site Roadway Infrastructure, all Traffic Impact Fees that might otherwise be payable under Chapter 18.17 and Chapter 18.18 of the Code in connection with the Development are hereby acknowledged to be fully offset by the construction of the Transportation Improvements and the On-Site Roadway Infrastructure and therefore are deemed to satisfy the requirements of Section 18.17.110 of the Code and thus to qualify for a credit against the applicable Traffic Impact Fees that might otherwise be payable under Chapter 18.17 and Chapter 18.18 of the Code in connection with the Development. There shall be no other credits or offsets to any Impact Fees, and notwithstanding any improvements or design elements contained in the Project or constructed in connection therewith, the Company shall pay all other Impact Fees in effect as of the Effective Date and applicable to the Project, including sewer and park fees, in full, as set forth in Exhibit "I".

3.3 Entitlements, Permits and Expediting Inspections.

The City and Company have agreed on the following provisions to expedite development of the Project:

3.3.1 City Project Coordinator. In order to facilitate the expeditious completion of the Project, the City shall select a City Project Coordinator for the Project. The

City Project Coordinator shall be the primary City designee responsible for coordinating all processing of Ministerial Permits and Approvals and all Subsequent Discretionary Project Approvals, if any, for the Project. The City Project Coordinator shall be either an outside consultant selected by City or a City employee of a sufficiently high level in the City to be authorized to effectively perform the duties of the City Project Coordinator. The City Project Coordinator shall be permitted to delegate day-to-day oversight to one or more department directors or other identified assistants of the City Project Coordinator. The City shall consult with Company as to its proposed selection of the City Project Coordinator and shall take into consideration Company's comments regarding the selection; provided that the selection of such City Project Coordinator shall be made by the City in its sole discretion. The City shall endeavor to maintain reasonable consistency with respect to the City Project Coordinator assigned to the Project through the completion of the Project subject to City employee performance criteria and operational requirements. Company shall assist in the efforts of the City Project Coordinator by promptly providing information reasonably requested by the City or the City Project Coordinator in order to clarify an application or to otherwise facilitate processing of an application. Company shall pay to the City the costs of the City Project Coordinator (whether an outside consultant or City employee), including overhead costs and costs of identified assistants of the City Project Coordinator, for work related to the Project. The City shall invoice Company monthly for the actual costs of the City Project Coordinator and such assistants on an hourly basis and Company will pay such invoices within thirty (30) days of receipt. Company shall not be entitled to a credit for the costs of the City Project Coordinator or such assistants against the standard Processing Fees and Charges paid by Company or any other fee which would normally be required to be paid by Company. Company shall appoint a Company Project Manager who shall serve as the primary interface with the City Project Coordinator. Company will endeavor to maintain reasonable consistency with respect to the Company Project Manager assigned to the

Project through completion of the Project subject to Company employee performance criteria and operational requirements.

The position of City Project Coordinator shall be eliminated after a term of three (3) years from the Effective Date, unless the Parties mutually agree to extend said term. In the event that the position of City Project Coordinator is eliminated, the Parties may thereafter reinstate the position upon mutual agreement at any time during the Term of this Agreement, subject to continued reimbursement by Company to City of the costs of such City Project Coordinator as set forth above.

3.3.2 Processing Fees and Charges. Company shall pay all Processing Fees and Charges applicable to the Project and all actions in implementation thereof. Applicable Processing Fees and Charges shall include all such fees in effect on a City-wide basis from time to time in accordance with their terms, including all increases in Processing Fees and Charges hereafter authorized by the City. In the event that the magnitude of the Project provides opportunities to realize economies of scale with respect to Processing Fees and Charges, the City will consider, in good faith, any proposals of Company for alternative fee arrangements that would benefit both Parties; provided that agreement to any such alternate arrangement shall be in the sole discretion of the City.

3.3.3 Timeframes and Staffing for Processing and Review. Expeditious processing of Ministerial Permits and Approvals, Inspections, Subsequent Discretionary Project Approvals, if any, and any other approvals or actions required for the Project are important to the implementation of the Project. Recognizing the importance of timely processing and review of Ministerial Permits and Approvals and Inspections, the City will work with Company in good faith to process and review such Ministerial Permits and Approvals and Inspections in a timely manner.

3.3.3.1 Ministerial Permits and Approvals/Inspections; Standard Guidelines; Additional Staffing for Expedited Processing. The City will review and/or

complete all requests for Ministerial Permits and Approvals as expeditiously as reasonably possible after Company submits full and complete applications for such Ministerial Permits and Approvals. City will also, as expeditiously as reasonably possible, respond to requests for Inspections by Company. City shall have no monetary liability or responsibility and shall not be subjected to any monetary damage claim (whether consequential, incidental or otherwise) for any delay in processing, issuance or completion of any Ministerial Permits and Approvals or any Inspections or other approvals. If the City fails to process Ministerial Permits and Approvals and Discretionary Actions and to respond to requests for Inspections such that the progress of the Project is materially delayed, such failure shall be referred to the City Manager. The City Manager shall review the City's performance in this regard and shall establish a plan in conjunction with the City Project Coordinator and the Company Project Manager which is intended to address any deficiencies. If, at any time during the implementation of this Agreement, Company is not satisfied with the processing timeframes resulting from use of standard City staffing and consultants, the City shall, at Company's written request and expense, hire plan check, inspection and other personnel, or hire additional consultants for such actions, or allocate use of exclusively dedicated staff time, as City shall elect in its sole discretion, such that expedited timeframes can be achieved; provided that, in that event, Company shall pay all direct and indirect costs incurred by City in connection with any above standard processing measures, including overhead costs and all costs of selecting, employing, supervising and reviewing any additional consultants. The City shall consult in good faith with Company as to any additional consultants to be hired pursuant to this Section; provided that the City shall retain sole discretion as to selection of any such parties. In order to provide the City with advance notice of upcoming applications for Ministerial Permits and Approvals, Company shall supply to the City, no later than January 1 of each year, a list of the various Ministerial Permits and Approvals which Company reasonably anticipates will be requested during that year. Such list shall be updated quarterly, unless agreed to sooner by the Parties. Company will also include on its list its

expected schedule for requested Inspections. To the extent, if any (a) that any outside consultants or exclusively dedicated staff performs work on the Project under this Section and Company reimburses City for the costs of such consultants or staff as provided above, and (b) the City determines, in its sole discretion, that those reimbursements paid to the City in connection with such outside consultants or exclusively dedicated staff, when combined with any standard application or processing fees concurrently paid to the City, result in a "double counting" payment by the Company to the City with respect to the cost to the City of processing any applications or approvals for the Project, then the City shall provide a credit to the Company against the standard City Processing Fees and Charges paid by Company or which normally would have been required to be paid by Company as necessary to avoid such double payment of costs by the Company. Company shall pay all reimbursements to the City required under this Agreement within thirty (30) days after Company receives an invoice identifying such reimbursable expenses. In no event shall Company withhold or delay any portion of such reimbursement or the payment of any Processing Fees or Charges based on any credit or alleged credit by Company unless and until City has confirmed in writing Company's right to such credit and the manner and timing for application of that credit.

3.3.3.2 Subsequent Discretionary Project Approvals and Other Permits. City shall also respond, as expeditiously as reasonably possible, to all requests by Company for conditional use permits, subdivision maps, lot tie agreements, site plan review, lot line adjustments, project permits, encroachment permits, air space or air rights lots, street vacations and other Subsequent Discretionary Project Approvals implementing the Project, if any. Company shall supply to the City, no later than January 1 of each year, a list of the various Subsequent Discretionary Project Approvals which Company reasonably anticipates will be requested during that year with respect to the Project. Such list shall be updated quarterly unless agreed to sooner by the Parties. Such list shall be utilized to provide advance notice to the City of all upcoming applications for Subsequent Discretionary Project Approvals implementing the

Project. At Company's request and expense, the City will retain consultants to assist the City in the review of Subsequent Discretionary Project Approvals implementing the Project in accordance with the terms and subject to the requirements and limitations, including reimbursement of City expenses, set forth in Section 3.3.3.1 above with respect to Ministerial Permits and Approvals.

3.3.4 Permit/Approval Dispute Resolution. Any disputes or questions of interpretation relating to implementation of the Project Approvals, Conditions of Approval or Subsequent Discretionary Project Approvals relating to the Project, or with respect to Ministerial Permits and Approvals or Inspections relating to the Project, shall be resolved through the City's established procedures, including the Site Plan Review process, as set forth in PD-32 and, in connection therewith, the Parties shall cooperate with each other in good faith to achieve the expeditious resolution of such matter. Any disputes or questions of interpretation relating to implementation of this Agreement shall be referred to the City Project Coordinator (or the Director, if there is no City Project Coordinator) and, in connection therewith, the Parties shall meet and confer in good faith to achieve the expeditious resolution of such matter. If no such resolution is reached, the Parties may pursue the remedies set forth in Section 7.

4. TERM.

4.1 Basic Term. The Project is a multi-phased Development which will occur over many years, the exact number of which will be determined ultimately by market conditions and other business factors. It is the intent of the Parties to establish as the Term of this Agreement more than sufficient time to complete the Project, so that if current expectations prove to be unrealistic, Company will have additional time in which to complete the Project, including the Transportation Improvements, in an economically sound manner. Therefore, this Agreement shall commence upon the Effective Date and shall remain in effect until completion of the development of the Property and the City Parcel as contemplated by Section 2.4 of this Agreement or for a term of twenty (20) years after the Effective Date, whichever is earlier,

unless said Term is terminated, modified or extended pursuant to the express provisions set forth in this Agreement or by mutual written consent of the Parties hereto. Following the expiration of said Term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, such termination shall not affect any right or duty arising from City entitlements or approvals, including the Project Approvals, approved prior to, concurrently with or subsequent to the Effective Date or any right or duty of Company which has accrued as of the date of such termination or which, by its terms, expressly survives such termination. As provided in Section 3.2.5 of this Agreement, the Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from any Moratorium.

4.2 Early Full Termination of Agreement. The Agreement is terminable: (a) by both Parties, with mutual written consent of the Parties, or (b) by City, following an uncured material default by the Company as set forth in Section 7 or following an Annual Review, as set forth in Section 5, or (c) by Company, following an uncured material default by City as set forth in Section 7.

5. ANNUAL REVIEW.

5.1 Annual Review Procedure. During the Term of this Agreement, the Company shall initiate and the City shall conduct an annual review of the Company's compliance with this Agreement. Such annual review shall be limited in scope to determining good faith compliance with the provisions of this Agreement as provided in the Development Agreement Act. As part of that review, Company shall submit an annual monitoring review statement to the Planning Commission describing its actions in compliance with this Agreement, in a form acceptable to the City, within forty-five (45) days after written notice from the City requesting that statement. The Planning Commission shall receive and review such statement and notify Company of any non-compliance within forty-five (45) days of receipt of the statement. Upon notification of any non-compliance, Company shall have the opportunity to cure any non-compliance within sixty (60) days or such longer period as is reasonably necessary to cure such non-compliance,

provided that Company shall continuously and diligently pursue such cure at all times until such non-compliance is cured. If Company fails to timely cure such non-compliance, in City's reasonable discretion, then the City Council shall review the matter within thirty (30) days thereafter.

5.2 Termination or Modification of Agreement. In the event the City Council determines on the basis of substantial evidence that the Company has not complied in good faith with the terms of this Agreement, the City may modify or terminate this Agreement in accordance with the Development Agreement Act and Chapter 21.29.070 of the Code. Notwithstanding any provision to the contrary in any City procedures, there shall be no modification of this Agreement unless the City Council acts pursuant to Government Code sections 65867 and 65868.

5.3 Certificate of Agreement Compliance. If, at the conclusion of an annual review, Company is found to be in good faith compliance with this Agreement, City shall, upon request by Company, issue a Certificate of Agreement Compliance ("Certificate") to Company stating that, after the most recent annual review and based upon the information then known to the City, (a) this Agreement remains in effect and (b) Company is, to the current actual knowledge of the City, in good faith compliance with the Agreement as required by Government Code section 65865.1. The Certificate shall be in the form attached hereto as Exhibit "J". Company may record the Certificate with the County Recorder. Additionally, as set forth in Section 8.43, either Party may at any time request from the other an estoppel certificate confirming, in addition to the foregoing, the status of the other Party's performance of its obligations under this Agreement to the actual knowledge of the certifying Party. Any such Certificate delivered pursuant to this Section shall not estop the Party delivering the Certificate from asserting a breach or default, or pursuing any rights arising therefrom, with respect to any matter which may be subsequently discovered by the certifying Party or which may occur subsequent to the date of such Certificate.

5.4 Failure of Annual Review. City's failure to conduct a review at least annually of Company's compliance with the terms and conditions of this Agreement shall not constitute or be construed by City or Company as a breach of or a default under this Agreement.

5.5 Reimbursement of Costs. Company shall reimburse the City for all of its actual costs (including costs related to review by outside consultants mutually agreed upon by the Parties), reasonably incurred in performing the required annual review within thirty (30) days after receipt of an invoice therefor from the City.

6. VESTED RIGHTS TO DEVELOP.

Subject to the terms of this Agreement, Company shall have a vested right to develop the Property in accordance with, and to the extent of, the Project Approvals. City and Company hereby acknowledge and agree that all of the Development allowed under the Project Approvals is vested specifically with Company, and may not be utilized by any other subsequent owner or lessee of a parcel or parcels of the Property except with the express written assignment of Company pursuant to Section 8.16, and then only to the extent of such assignment; provided, however, that nothing herein shall be deemed to preclude a subsequent owner or lessee of a parcel or parcels of the Property from seeking additional entitlements to Development to the extent that such entitlements are additive to, and not a reduction of, the Development rights hereby vested with Company and to the further extent that such entitlements do not (a) expand the Housing Districts or increase the intensity or density of the residential uses therein or (b) allow Warehouse and Distribution uses, other than as an Accessory Use as currently permitted under this Agreement and PD-32.

7. DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Intent.

Under this Agreement, Company's obligation to City is to develop the Project, including the construction of the Transportation Improvements, the Lakewood Boulevard Landscape Improvements and the other Project Infrastructure improvements, subject to the

conditions established in the Project Approvals and the terms of this Agreement and in accordance with the Land Use Regulations, and to pay any amounts or reimbursements due to City under the express terms of this Agreement, including, without limitation, the Housing Payment under Section 8.30, and City's obligation to Company is to permit Company to complete the Project in accordance with the Project Approvals, the Land Use Regulations, and the terms of this Agreement. The Parties agree that the following provisions shall govern the availability of remedies should either Party breach its obligations under this Agreement.

7.2 City's Remedies.

7.2.1 Default by Company. In addition to the annual review process under Section 5 above, in the event Company does not perform its obligations under this Agreement in a timely manner, the City shall have those rights and remedies provided for in this Agreement, including without limitation Section 7.6; provided, that the City's right to compel specific performance of the obligations of Company shall be subject to the limitations set forth in Section 7.2.5 of this Agreement; and provided, further, the City shall have no right to monetary damages as a result of any failure by Company to start or complete the Project (other than to the extent arising from the Company's failure to complete, remove or secure improvements as required by Section 7.2.5 below or to pay any amounts or reimbursements due to City under the express terms of this Agreement including, without limitation, the Housing Payment under Section 8.30). Nothing in this Section 7.2.1 shall limit the City's right to terminate this Agreement in accordance with Section 7.2.4.

7.2.2 Notice of Default. With respect to a default pursuant to this Agreement, the City shall submit to Company a written notice of default in the manner prescribed in Section 8.5, identifying with specificity those obligations of Company which have not been performed. Upon receipt of the notice of default, Company shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than one hundred twenty (120) days after receipt of

the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that Company shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

7.2.3 Failure to Cure Default Procedure. If, after the cure period has elapsed, the City finds and determines that Company remains in default and the City wishes to terminate or modify this Agreement, the Director shall make a report to that effect to the Planning Commission and set a public hearing before the Commission in accordance with the notice and hearing requirements of Government Code sections 65867 and 65868. If, after public hearing, the Planning Commission finds and determines that Company has not cured the default pursuant to this Section 7.2, and that the City is entitled to terminate or modify this Agreement, Company shall be entitled to appeal that finding and determination to the City Council in accordance with Section 8.2. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity.

7.2.4 Termination or Modification of Agreement. If it is determined pursuant to the above-described procedures that the Company has failed to timely cure a material breach of the obligations under this Agreement, City shall have the right to modify or terminate this Agreement as provided in Chapter 21.29.070C of the Code; provided, however, that with respect to a material breach of a severable obligation, as defined in Section 8.16.2, any such termination (as opposed to a modification) of this Agreement, may only affect the portion of the Property affected by such breach; and further provided that with respect to a modification (as opposed to termination) of this Agreement, any modification that would materially increase the Company's obligations under this Agreement may not be made unilaterally by City and shall require the consent of Company.

7.2.5 Specific Performance. Except as provided in this Section, the City shall have no right to seek a remedy of specific performance with respect to the Development of the Project in the event of an abandonment of the Project. The City's right to seek specific

performance in connection with the Development of the Project shall be specifically limited to (a) compelling Company to complete or demolish any uncompleted improvements initiated in connection with the Project which are located on public property or property which has been offered for dedication to the public, with the choice of whether to demolish or complete such improvements and the method of such demolition or completion of such improvements to be selected by the City in its sole discretion, (b) compelling Company to dedicate and properly complete any public improvements which are required by the Project Approvals or the Land Use Regulations to be dedicated and/or completed prior to occupancy of those Project improvements in fact constructed on the Property pursuant to this Agreement, and (c) compelling Company to complete, demolish or make safe and secure any uncompleted private improvements located on the Property with the choice of whether to demolish, complete or secure such private improvements and the method of such demolition, completion and securing such private improvements to be selected by Company in its sole discretion. Notwithstanding anything in Section 7.2 to the contrary and notwithstanding any termination of this Agreement, the City shall have the right to enforce all applicable provisions of the Land Use Regulations and the Project Approvals for any portion of the Project actually constructed and to collect all payments and reimbursements due to City under the express terms of this Agreement.

7.3 Company's Remedies.

7.3.1 Default and Notice of Default. With respect to a default by the City pursuant to this Agreement, Company shall first submit to the City a written notice of default in the manner prescribed in Section 8.5, identifying with specificity those obligations of the City which have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than one hundred twenty (120) days after receipt of the notice of default, or such longer period as is reasonably necessary

to remedy such default(s), provided that the City shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

7.3.2 Specific Performance; Waiver of Damage Remedies. Both Parties agree and recognize that, due to the size, scope, and nature of the Project, including the Project Infrastructure improvements that must be made in the initial phases of the Project, the design and placement of various discrete uses and structures, and the functional and economic interrelationships of the various components of the Project, as a practical matter it will not be possible physically, financially and as a matter of land use planning, to restore Douglas Park to its former state once any significant portion of Douglas Park is developed and/or any portion of the Project Infrastructure is constructed. Further, the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential, punitive or otherwise) in the event of a breach by City hereunder. For the above reasons, the Parties agree that, except as expressly provided in Section 7.3.3, specific performance is the proper remedy and shall be the only remedy available to Company in the event of the City's failure to carry out its obligations hereunder. Company specifically acknowledges that it may not seek monetary damages of any kind in the event of a default by the City under this Agreement, and Company hereby waives, relinquishes and surrenders any right to any such monetary remedies. Company covenants not to sue for or claim any monetary damages for the breach by the City of any provision of this Agreement and hereby agrees to indemnify, defend and hold the City and all City Representatives harmless from any cost, loss, liability, expense or claim (including attorneys' fees) arising from or related to any claim brought by Company inconsistent with the foregoing waivers. The Company may also, in its discretion, terminate this Agreement upon occurrence of specified events, as provided in Section 7.5. Without limitation of the foregoing, any and all claims against the City arising under this Agreement and falling within the scope of the California Tort Claims Act shall be made in

accordance with the requirements of the California Tort Claims Act (or any successor statute) set forth in California Government Code section 810 *et seq*.

7.3.3 Restitution of Improper Development Fees. In the event any Impact Fees are imposed by City on Development of the Project other than those authorized pursuant to this Agreement, Company shall be entitled to recover from City restitution of all such improperly assessed Impact Fees paid under protest, together with interest thereon to the extent and at the rate provided by applicable law. Any and all such claims for restitution falling within the scope of the California Tort Claims Act shall be made in accordance with the California Tort Claims Act (or any successor statute) set forth in California Government Code section 810 *et seq*.

7.4 Rights and Duties Following Termination.

Upon the termination of this Agreement, no Party shall have any further right or obligation hereunder except with respect to (a) any obligations to have been performed or which have accrued prior to said termination, (b) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, or (c) any obligations arising under a provision of this Agreement which expressly provides that it survives the termination of this Agreement. The termination of this Agreement shall not alter or limit in any way the CC&Rs, which shall continue to be binding on the Property Owners in accordance with the terms set forth therein.

7.5 Company's Right To Terminate Upon Specified Events.

Notwithstanding any other provisions of this Agreement to the contrary, Company retains the right to terminate this Agreement upon thirty (30) days written notice to City in the event that Company reasonably determines that continued Development of the Project has become economically infeasible due to changed market conditions, increased Development costs, burdens imposed, consistent with this Agreement, by the City as conditions to Subsequent Discretionary Project Approvals, the City's exercise of its Reserved Powers in a way deemed by Company to be inconsistent with the Development of the Project, or upon the City's failure to

perform any material duty or obligation hereunder which is not cured within the applicable cure period set forth herein. In the event Company exercises this right, it shall nonetheless be responsible for (a) the completion, as soon thereafter as reasonably possible, of all Project Infrastructure that has been commenced at the time that Company exercises such right, (b) performance of the obligations of the Company set forth in Section 7.2.5 above, (c) to the extent not covered by (a) and (b) above, mitigation of impacts to City resulting from Development that may have occurred on the Property prior to the notice of termination on a fair share or nexus basis, and (d) any portion of the Housing Payment that has become or later becomes payable as set forth in Section 8.30. Within the thirty (30) day notice period City and Company shall meet to identify any mitigation obligation described in subsection (c) of this Section that may remain to be satisfied. If the Parties are in disagreement at the end of the thirty (30) day notice period, the Agreement shall nevertheless be terminated and the dispute over remaining mitigation obligation shall thereafter be resolved pursuant to Section 7.6.

7.6 Legal Actions.

Subject to the limitation on remedies imposed by this Agreement, either Party may institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation, enforce by specific performance the obligations and rights of the Parties hereto or seek declaratory relief with respect to its rights, obligations or interpretations of this Agreement. The limitation of remedies set forth herein shall not limit any provisional remedies, including, without limitation, injunctive or similar relief, from any court of competent jurisdiction as may be necessary to protect the benefit to a Party of its rights and permitted remedies hereunder.

8. GENERAL PROVISIONS

8.1 Effective Date.

This Agreement shall be effective upon its execution by a duly authorized representative of each Party hereto and recordation with the Los Angeles County Recorder, as

hereinafter provided. As provided in section 65868.5 of the Development Agreement Act, a copy of this Agreement shall be recorded with the Los Angeles County Recorder within ten (10) days after its execution by both Parties. Amendments to this Agreement approved by the Parties shall also be recorded.

8.2 Appeals to City Council.

Where an appeal by Company to the City Council from a finding and/or determination of the Planning Commission or any other City Agency is created by this Agreement, such appeal shall be filed, if at all, within twenty (20) days after the delivery of notice in accordance with Section 8.5 of such finding and/or determination to Company. The City Council shall act upon the finding and/or determination within ninety (90) days after such delivery of notice, or within such additional period as may be agreed to by the Company, which agreement shall not be unreasonably withheld, conditioned or delayed. In the event that the City Council fails to act within said ninety (90)-day period, or such additional period as may be agreed to by the Company, Company may seek remedies under Section 7.3.

8.3 Cooperation and Implementation

8.3.1 Processing. Upon satisfactory completion by Company of all required preliminary actions and payment of applicable Processing Fees and Charges, including the fee for processing this Agreement, City shall process all required steps necessary for the implementation of this Agreement and development of the Douglas Park Property in accordance with the terms of this Agreement. Company shall, in a timely manner, provide City with all documents, plans and other information necessary for City to carry out such processing.

8.3.2 Other Governmental Permits. Company shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. City, at no out-of-pocket cost or expense to the City, shall reasonably cooperate with Company in its endeavors to obtain such

permits and approvals and shall, from time to time at the request of Company, consider, in good faith and in the City's sole discretion, agreements with any such entity to ensure the availability of such permits and approvals, or services, provided such agreements are reasonable and do not result in any additional cost or expense or other adverse impact to City. Such entities may include, but are not limited to, school districts, utility districts or providers, the City of Lakewood, the County of Los Angeles Airport Land Use Commission, the County of Los Angeles Public Works Department, the County of Los Angeles Flood Control District and the California Department of Transportation ("Caltrans"). These agreements may include, but are not limited to, joint powers agreements under the provisions of the Joint Exercise of Powers Act (Government Code section 6500, et seq.) or the provisions of other laws to create legally binding, enforceable agreements between such parties. Company shall reimburse City for all costs and expenses incurred in connection with reviewing, negotiating or entering into any such agreement provided that Company has requested the City to do so. Company shall indemnify, defend (with counsel selected by the indemnified Party), and hold harmless City, all City Agencies, and each City Representative from and against any and all Liabilities incurred by the indemnified Party arising from or related to any challenge by any person or entity to any such agreement, and shall reimburse to City any costs and expenses incurred by City in enforcing any such agreement. Any fees, assessments, or other amounts payable by City under any such agreement shall be borne by Company, except where Company has notified City in writing, prior to City entering into such agreement, that it does not desire for City to execute such an agreement.

8.3.3 Cooperation in the Event of Legal Challenge By Third Party. In the event of any Litigation, the Parties hereby agree to affirmatively cooperate in defending said action.

8.3.3.1 Company and City Legal Counsel. In the event any Litigation (including any cross-action) is filed against the City and/or Company, the Party receiving service

of such action shall notify the other in writing of such Litigation promptly after service upon it and shall transmit to the other any and all documents (including, without limitation, correspondence and pleadings) received by, or served upon, it in connection with such Litigation. Within ten (10) days after delivery of such notice, Company shall retain and appoint legal counsel ("Counsel" for purposes of this section 8.3.3) with respect to the Litigation. The Parties acknowledge that Counsel will appear and represent Company in connection with such Litigation and such Counsel shall, at the request of the City Attorney, cooperate with the City Attorney, shall prepare drafts, for review by the City Attorney, of all pleadings, motions and other Litigation-related documents, and shall coordinate legal strategy and otherwise cooperate with City in connection with the Litigation, all at Company's cost and expense. Company shall also pay all filing fees, court costs and similar out-of-pocket expenses required for the City to defend the Litigation. The City Attorney or his designee shall appear on behalf of the City in any such Litigation and shall at all times retain final authority and control over all documents to be filed on the City's behalf and all actions to be taken by the City with respect to Litigation. The Company shall be responsible for reimbursing the City for reasonable fees or costs of any attorneys hired by the City in connection with such Litigation, but the Company shall not be responsible for paying any fees, costs, Attorneys' Fees or expenses resulting from unreasonable actions taken by the City in connection with the Litigation against the written advice of Counsel given to City prior to the action taken. The City shall cooperate with Counsel's defense of the Litigation, and shall make its records (other than documents privileged from disclosure) and personnel available to Counsel as may be reasonably requested by Counsel in connection with the Litigation.

8.3.3.2 Reimbursement of Attorneys' Fees. Within thirty (30) days after delivery of a final judgment awarding Attorneys' Fees or costs to a plaintiff or upon execution of a written settlement agreement by and between the City and a plaintiff which requires the City to pay Attorneys' Fees or costs to a plaintiff, Company shall pay such

Attorneys' Fees and costs to the plaintiff as required unless the City settles any Litigation, in whole or in part, without Company's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

8.3.3.3 Indemnification. Company shall indemnify, save and hold the City, City Agencies, and City Representatives (collectively, "the City" in this Section 8.3.3.3) harmless from any and all Liabilities to the extent they arise from or are related to any Litigation. Notwithstanding any other provision of this Section 8.3.3, the City's sole right under this Agreement to reimbursement of Attorney Fees awarded in connection with the defense of Litigation is that set forth in Section 8.3.3.2. Furthermore, City shall be deemed to have waived its right to any further reimbursement or indemnification with respect to an individual Litigation matter under this Section 8.3.3 if the City settles such Litigation, in whole or in part, without Company's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding any provision to the contrary, if the City is indemnified with respect to a Litigation matter pursuant to this Section 8.3.3.3, Company, as the indemnifying Party, shall at all times retain final authority and control over all documents to be filed in such Litigation by the Company subject to the City's review and approval thereof, which approval shall not be unreasonably withheld, conditioned or delayed. Nothing in this Section 8.3.3 shall waive or limit any obligations of the Company or rights and protections of the City set forth in any Project Approvals.

8.3.3.4 Joint Defense. It is understood and agreed that Counsel shall represent Company and that the City shall not be considered the client of Counsel, nor Company the client of the City Attorney. Both Company and the City understand that the requirements of cooperation contained in this Agreement apply only as to matters reasonably necessary for the accomplishment of the defense of the Litigation and shared information is intended to be, and must be, kept confidential. In the event of any conflict between the covenants of cooperation set forth in this Section and any legal obligations imposed upon City, those legal obligations shall

control and the City's compliance therewith shall not constitute a breach or violation of any provisions of this Section 8.3. Without limitation of the foregoing, nothing in this Agreement shall limit the City's discretion in responding to any Public Records Act request it may receive, and the City shall have the absolute right to respond to such request in such manner as it determines legally necessary or appropriate without restriction or limitation by this Agreement.

8.3.3.5 Continuing Obligations. This Section 8.3.3 shall survive termination of this Agreement.

8.4 Relationship of Parties.

It is understood and agreed by the Parties hereto that the contractual relationship created between the Parties hereunder is that of independent contracting parties and not an agency relationship. City and Company hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Company joint venturers or partners.

8.5 Notices.

Any notice or communication required under this Agreement between the City or Company shall be in writing and shall be effective when delivered by registered or certified mail, postage prepaid, return receipt requested; when delivered personally; or when delivered by overnight courier service. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or delivered by overnight courier, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address set forth herein, or any

additional address, to which such notice or communication shall be given. Until notified under the preceding sentence, such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: Director of Planning and Building
City of Long Beach
333 W. Ocean Boulevard, Fourth Floor
Long Beach, California 90802

With Copies to: City Manager
City of Long Beach
333 W. Ocean Boulevard, Thirteenth Floor
Long Beach, California 90802

City Attorney
City of Long Beach
333 W. Ocean Boulevard, Eleventh Floor
Long Beach, California 90802

If to Company: McDonnell Douglas Corporation
c/o Boeing Realty Corporation
15480 Laguna Canyon Road
Suite 200
Irvine, California 92618-2114
Attention: Stephen Barker

With Copies to: Douglas Park
c/o Boeing Realty Corporation
15480 Laguna Canyon Road
Suite 200
Irvine, California 92618-2114
Attention: DeDe Soto

Latham & Watkins
633 W. Fifth Street, Suite 4000
Los Angeles, California 90071-2007
Attention: Dale K. Neal

8.6 Company Hold Harmless.

Company hereby agrees to and shall indemnify, save, hold harmless and defend the City, City Agencies and the City Representatives (collectively, "the City" in this Section), from any and all Liabilities, which may arise, directly or indirectly, from Company or Company's contractors, subcontractors, agents, or employees' operations, acts or omissions in connection with the Development of the Project, whether such operations, acts or omissions be by Company or any of Company's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Company or any of Company's contractors or subcontractors. Nothing in this Section shall be construed to mean that Company shall hold the City harmless and/or defend it to the extent that such claims, costs or liability arise from the negligent acts of the City or any person or entity acting on City's behalf, including without limitation City Representatives; provided that the foregoing limitation shall not be construed to apply to Company or its successors or assigns or their agents, employees, representatives, consultants, contractors, or subcontractors, to the extent acting on City's behalf pursuant to the terms of this Agreement. City agrees that it shall fully cooperate with Company in the defense of any matter in which Company is defending and/or holding the City harmless. Company shall be relieved from any further liability under this Section with respect to any portion of the Property transferred to another party where such party assumes Company's rights and obligations under this Agreement pursuant to Section 8.16 with respect to such portion of the Property transferred; provided that upon such transfer, the indemnity set forth herein shall automatically apply to such transferee, with all references herein to "Company" deemed references to such transferee, and further provided that such transferee assumes the obligations under this Section 8.6 in writing and reaffirms its indemnity of City pursuant to this Section.

8.7 Insurance.

To the extent that the Company carries commercial general liability (or equivalent) insurance with respect to the Project, or a portion thereof, during the Term, Company shall name the City as an additional insured on all policies.

8.8 Severability and Termination.

If any provision of this Agreement should be determined by a court to be invalid or unenforceable, or if any provision of this Agreement is superseded or rendered unenforceable according to the terms of any law which becomes effective after the date of this Agreement, the unenforceable provision shall be deemed severable and the remaining provisions of this Agreement shall remain in full force and effect and continue to be binding on both Parties.

8.9 Time of Essence.

Time is of the essence for each provision of this Agreement of which time is an element.

8.10 Modification or Amendment.

Subject to meeting the notice and hearing requirements of section 65867 of the Development Agreement Act, this Agreement may be modified or amended from time to time by mutual consent of the Parties or their successors in interest in accordance with the provisions of section 65868 of the Development Agreement Act. Notwithstanding anything herein to the contrary, City shall have no obligation to grant any application for modification to this Agreement or the Project Approvals by Company that either expands the Housing Districts or increases the intensity or density of the residential uses therein or allows Warehouse and Distribution uses, other than as an Accessory Use as currently permitted under this Agreement and PD-32. The mixture of uses and interrelationship of the components of the Project have been extensively negotiated and carefully balanced and any such modification could materially affect the economic and planning goals of and the impact contemplated by this Agreement. City would not have entered into this Agreement if Company had any right to any such modification. If approved in a form to which Company and City have consented in writing, any change in the Project Approvals or Project after the Effective Date shall be incorporated herein as an addendum, and may be further changed from time to time only as provided in this Section. Any change in the Project Approvals or Project made in accordance with the procedures required by

the Land Use Regulations and with the written consent of the Company and City as required by this Agreement shall be conclusively deemed to be consistent with this Agreement, without any further need for any amendment to this Agreement or any of its Exhibits.

8.11 Waiver.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought and referring expressly to the provisions to be waived. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event.

8.12 Equitable Servitudes and Covenants Running with the Land.

Any successors in interest to the City and Company shall be subject to the provisions set forth in sections 65865.4 and 65868.5 of the Development Agreement Act. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 6 or Section 8.16, and no successor owner of the Property or any interest therein shall have any rights hereunder except and to the extent assigned to them by Company in writing pursuant to Section 8.16. In any event, no owner or tenant of an individual completed residential unit within the Project shall have any rights under this Agreement, including Section 3.2.1.5.

8.13 Governing State Law; Compliance With Applicable Law.

This Agreement shall be construed in accordance with the laws of the State of California, and the venue for any legal actions brought by any party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the

Central District of California for any federal actions. The Company shall cause all work performed in connection with construction of the Project to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies (including, without limitation, all applicable federal and state labor standards, including the prevailing wage provisions of sections 1770 *et seq.* of the California Labor Code), and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The Company shall indemnify, defend and hold the City, all City Agencies and all City Representatives harmless from any Liabilities based upon or arising from the failure of any work related to the Project to comply with all such applicable legal requirements, including, without limitation, any such Liabilities that may be asserted against or incurred by City, any City Agencies or any City Representatives with respect to or in any way arising from the Project's compliance with or failure to comply with applicable laws, including all applicable federal and state labor standards including, without limitation, the requirements of California Labor Code section 1720 *et seq.*

Company agrees that all public work (as defined in California Labor Code section 1720) performed pursuant to this Agreement (the "Public Work"), if any, shall comply with the requirements of California Labor Code sections 1770 *et seq.* City and the City Representatives make no representation or statement that the Project, or any portion thereof, is or is not a "public work" as defined in California Labor Code section 1720.

In all bid specifications, contracts and subcontracts for that Public Work, Company (or its general contractor, in the case of subcontracts) shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the Public Work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract must contain the following provision: "It shall be

mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this contract. The contractor expressly agrees to comply with the penalty provisions of California Labor Code section 1775 and the payroll record keeping requirements of California Labor Code section 1771."

Each portion of the Project shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Company shall be responsible for the procurement and maintenance thereof, in such form as may be required of the Company and all entities engaged in work on the Property by applicable law. Except with respect to the portion of the above indemnity applicable to compliance of the Project with all prevailing wage requirements, Company shall be relieved from any further liability under this Section with respect to any portion of the Property transferred to another party where such party assumes Company's rights and obligations under this Agreement pursuant to Section 8.16 with respect to such portion of the Property transferred; provided that upon such transfer, the covenants and indemnity set forth herein shall automatically apply to such transferee, with all references herein to "Company" deemed references to such transferee, and further provided that such transferee assumes the obligations under this Section 8.13 in writing and reaffirms its indemnity of City, the City Agencies and all City Representatives pursuant to this Section. With respect to the portion of the above indemnity concerning compliance with all prevailing wage requirements, each assignee of Company shall assume in writing and expressly reaffirm that assignee's indemnity of the City, the City Agencies and all City Representatives with respect to compliance with such prevailing wage requirements to the extent applicable to the portion of the Property acquired by said assignee, but such assumption shall not release or relieve Company from its liability under such portion of that indemnity and Company shall remain jointly and severally liable with such assignee for said indemnity; provided, that, at the time of such assignment by Company, it may request that City, acting in its sole discretion, agree to release Company from such continuing liability under its

indemnity based upon the financial capacity of the Company's proposed assignee, but any such release shall be at the City's sole discretion and election and, to be effective, shall be in writing.

8.14 Constructive Notice and Acceptance.

Every person who after the Effective Date of this Agreement owns or acquires any right, title, or interest in or to any portion of the Douglas Park Property, is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Douglas Park Property, and all rights and interests of such person in the Property shall be subject to the terms, requirements and provisions of this Agreement.

8.15 Requests for Payment.

With respect to any requests by the City for payment of amounts due under this Agreement, Company retains its right to review any invoices or requests for payments submitted by the City pursuant to this Agreement. Company shall review and reasonably approve such invoices or requests for payment or shall identify any disputed amounts within twenty (20) days after receipt. In the event Company fails to respond within such twenty (20) day period, City may pursue its remedies under Section 7.2. At Company's request, the City shall provide Company with reasonable information or back-up material supporting such invoices or requests for payment. Company shall have a right, at Company's expense, to audit City books and records in connection with such invoices or requests for payment at City's offices, with reasonable notice, during business hours. If Company disputes any invoices or requests for payment, Company shall timely pay all undisputed amounts and the Company Project Manager and City Project Coordinator shall expeditiously meet and confer in good faith to resolve any such dispute. If the Parties cannot resolve such dispute, the City Manager and senior Company management shall expeditiously meet and confer in good faith to resolve the dispute. If the City Manager and senior Company management cannot resolve the dispute, the Parties shall be entitled to such remedies as provided in Section 7 of this Agreement.

8.16 Assignment.

8.16.1 Right to Assign. Company shall have the right to sell, encumber, convey, assign or otherwise transfer, in whole or in part, directly or indirectly, its rights, interests and obligations under this Agreement, to any person or entity at any time during the Term of this Agreement provided that Company first obtain the written consent of the City. Such consent may not be unreasonably withheld or conditioned and must be granted upon demonstration by Company to the reasonable satisfaction of the City Manager that the assignee (or any guarantor of the assignee's performance) has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the portion of the Project affected by such assignment and that the proposed assignee has adequate experience with developments of comparable scope and complexity and has successfully completed such development. Any request for City approval of an assignment shall be in writing and accompanied by certified financial statements of the proposed assignee and any additional information concerning the identity, financial condition and experience of the assignee as the City may reasonably request; provided, that, any such request for additional information by the City shall be made, if at all, within ten (10) business days after City's receipt of the request for approval of the proposed assignment. If City wishes to disapprove any proposed assignment, City shall set forth in writing and in reasonable detail the grounds for such disapproval. If the City fails to disapprove any proposed assignment within forty-five (45) days after receipt of written request for such approval delivered in the manner set forth in Section 8.25 and delivery of the required and requested additional information, if any, described above, such proposed assignment shall be deemed to be approved. Any attempted transfer in violation of this provision shall be void ab initio, and shall constitute a breach of this Agreement. All successors and assigns to Company that wish to assign any rights under this Agreement shall also be bound by the terms of this Section 8.16 and each successive assignment of the rights hereunder shall also be subject to the requirements of this Agreement. Any assignment shall be documented by and shall require a written Assignment and Assumption

Agreement substantially in the form attached hereto as Exhibit "K". Any approval required of the City under this Section 8.16 may be provided by the City Manager and the City Manager is hereby delegated the authority to provide such approval; provided that nothing herein shall require the City Manager to act prior to submission of such matter to the City Council if the City Manager considers that review necessary or helpful in the City Manager's sole discretion. Any such submission of the City Manager to the City Council shall not extend the forty-five (45) day period to disapprove the assignment set forth in this Section.

8.16.2 Release of Transferring Owner; Non-Severable and Severable Obligations. Except as otherwise provided in this Agreement, upon the sale, transfer or assignment of all or a portion of the Property by the Company or any successor assignor and the assignment to and assumption by its assignee of the rights and obligations of this Agreement applicable to the portion of the Property transferred, the seller, transferor or assignor (whether Company or its successor in interest) shall be released of those obligations under this Agreement first arising after the effective date of that assignment that are so assigned by said seller, transferor or assignor and assumed by its assignee; provided that the obligations under this Agreement that are so assigned are assumed in writing by the buyer, transferee, or assignee and are enforceable by the City against said buyer, transferee, or assignee. The following obligations of the Company (and any successor or assign of Company) under this Agreement shall at all times remain non-severable, and, notwithstanding any such assignment of a portion of the Property or this Agreement, a default under this Agreement with respect to any such obligations shall constitute a default under this entire Agreement and shall entitle City to exercise all of its rights hereunder, including termination of this Agreement in its entirety as provided for in Section 7.2.4 subject to the notice and cure provisions set forth in Section 7.2.2, which notice shall be provided to Company and the defaulting party or parties in the event of such default:

(a) Construction of the On-Site Project Infrastructure as per the Performance Trigger Summary attached as Exhibit "H" and construction of the

Transportation Improvements as per the Transportation Improvements and Phasing Program attached hereto as Exhibit "F," including the Lakewood Boulevard Landscape Improvements set forth in Section 2.4.2, the Transportation Improvement Phasing Plan set forth in Section Section 2.4.2, and the Park improvement and delivery obligations set forth in Section 8.25 (but not including the payment of Park and Recreation Fees, which is a severable obligation);

(b) The Maintenance of Privately Maintained Publicly Owned Infrastructure, including Maintenance of parkway and median landscaping, the Lakewood Boulevard Landscape Improvements and the Parks pursuant to Section 2.4.3;

(c) The requirement to reimburse the City for costs of the City Project Coordinator pursuant to Section 3.3.1, to the extent such costs are incurred in connection with Development by the Company and not an assignee;

(d) The Housing Payment requirements set forth in Section 8.30;

(e) The School Agreement requirements set forth in Section 8.31;

(f) The Public Art Requirement set forth in Section 8.45;

(g) The Project Trip Cap set forth in Section 8.29;

(h) The indemnity to the City, City Agencies, and City Representatives for Litigation set forth in Section 8.3.3.3 and for failure to comply with prevailing wage requirements as set forth in Section 8.13 (unless released per Section 8.13); and

(i) Any other obligation of this Agreement not listed in subsections (a) – (h) as determined by the Parties pursuant to the meet and confer provisions set forth below in Section 8.16.3.

Upon the conveyance of a portion of the Property and the assignment and assumption of the rights and obligations under the Agreement with respect thereto, the following obligations under this Agreement shall be deemed severable, with respect to the assigned portion of the Property and this Agreement, and, following such a conveyance and assignment, a default under this Agreement with respect to any such assigned obligations shall constitute a default only by the breaching party (and shall not constitute a default under this entire Agreement) and shall only entitle the City to exercise its rights and to pursue the remedies hereunder with respect to the portion of the Property affected by such breach, including termination of this Agreement with respect to such portion of the Property, as provided for in Section 7.2.4:

(j) Payment of Impact Fees pursuant to Section 3.2.7;

(k) Payment of Processing Fees and Charges pursuant to Section 3.3.2;

(l) Failure to reimburse City for costs of the City Project Coordinator pursuant to Section 3.3.1, to the extent such costs are incurred by an assignee and not Company;

(m) Failure to pay costs incurred by City in connection with hiring additional consultants to process Ministerial Permits and Approvals pursuant to Section 3.3.1;

(n) Violation of the Conditions of Approval or the Land Use Regulations pursuant to Section 3.1.1;

(o) Failure to indemnify as required by Section 8.6;

(p) Failure to name the City as an additional insured pursuant to Section 8.7;

(q) Failure to comply with applicable laws (except for prevailing wage laws) and/or to indemnify the City in connection therewith pursuant to Section 8.13; and

(r) Any other obligation of this Agreement not listed in subsections (j) – (q) as determined by the Parties pursuant to the meet and confer provisions set forth below in Section 8.16.3.

8.16.3 Meet and Confer for Obligations Not Identified. Upon the request of Company, the Parties shall expeditiously meet and confer in a reasonable attempt to determine whether a particular obligation under this Agreement and not specifically identified under Section 8.16.2 above should be treated as non-severable under Section 8.16.2(i) or severable pursuant to Section 8.16.2 (r). If the Parties cannot agree upon whether a particular obligation is non-severable or severable, the Parties may pursue the remedies set forth in Section 7.

8.17 Tentative Subdivision Maps.

Pursuant to California Government Code section 66452(a), the duration of any tentative subdivision map approved for the Property, or any portion thereof, subsequent to the Effective Date shall automatically be extended for a period equal to the Term of this Agreement.

8.18 Water Availability.

The residential component of the Project is proposed for a site that is within an urbanized area and has been previously developed for urban uses, and the immediate contiguous properties surrounding the residential project site are, and previously have been, developed for urban uses. For these reasons, any tentative map prepared for the Project is exempt from the written verification of water availability requirements contained in section 66473.7 of the Development Agreement Act. This Section satisfies the requirement set forth in California Government Code section 65867.5(c).

8.19 Job Training.

Company agrees to use good faith efforts to create new jobs for low- or moderate-income persons as outlined by the City's Workforce Development Bureau. Company further agrees that it will use good faith efforts to require that all leases, subleases, purchase and sale agreements, concession agreements and licenses entered into by Company regarding any portion of the Project site shall require that all tenants, subtenants, and assignees use good faith efforts to create new jobs for low- or moderate-income persons as outlined by the City's Workforce Development Bureau.

In furtherance of these good faith efforts, Company agrees that it will reasonably cooperate with the City, through its Workforce Development Bureau and staff, with recruitment, screening and tracking. In implementing such efforts, the City, through its Workforce Development Bureau and staff, will provide to Company, its successors and assigns, and all Project tenants and subtenants, services, at no cost, to pre-screen and qualify potential job applicants. Such services shall include assisting with community outreach to recruit qualified job applicants and conducting prescreening sessions to determine the most qualified applicants for jobs. All qualification and hiring decisions will be made by Company, its successors and assigns, or Project tenants or subtenants, or assignees, as applicable. The City's Workforce Development Bureau will be responsible for providing staff necessary for pre-employment assistance at no cost to Company. Company's failure to comply with the provisions of this Section will not constitute a default under this Agreement or result in any right on the part of the City to terminate this Agreement.

8.20 Regulation by Other Public Agencies.

It is acknowledged by the Parties that other public agencies not subject to control by City possess authority to regulate aspects of the Development of the Property, and this Agreement does not limit the authority of such other public agencies.

8.21 Vesting Tentative Maps.

If any tentative or final map, or tentative or final parcel map, heretofore or hereafter approved in connection with Development of the Property, is a vesting map under the Subdivision Map Act (Government Code section 66410, et seq.), and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to develop to Company, then and to that extent the rights and protection afforded Company under the laws and ordinances applicable to vesting maps shall supersede the provisions of this Agreement. Except as set forth immediately above, Development of the Property shall occur only as provided in this Agreement, and the provisions in this Agreement shall be controlling over any conflicting provision of law or ordinance concerning vesting maps.

8.22 Pre-Existing Rights of First Refusal and Use Restrictions.

City hereby agrees, upon completion of the Phase 1 On-Site Roadway Infrastructure as set forth in Section 2.4.2 and shown on Exhibit "E-1", hereto, including that portion of "F" Street that is part of the Phase 1 On-Site Roadway Infrastructure, to waive, in a recordable instrument or document in the form attached as Exhibit "L" hereto, any of its interests in or rights under the existing right of first refusal as well as any use restrictions over a portion of the Property (collectively, the "Pre-Existing Rights") contained in those Corporation Grant Deeds recorded in Los Angeles County as instrument numbers 81-1260432 and 81-1260433, Official Records. The City further acknowledges that none of the construction activities necessary to complete the Phase 1 On-Site Roadway Infrastructure shall be deemed to be inconsistent with the Pre-Existing Rights and City reserves the right to waive, should it later elect in its sole discretion to do so, any of the Pre-Existing Rights prior to completion of the Phase 1 On-Site Roadway Infrastructure.

8.23 Public Financing Districts. Company may propose to initiate proceedings to form one or more Public Financing Districts with respect to the Property, or a portion thereof, to finance all or a portion of the cost of the design, engineering, acquisition, construction and

maintenance costs of those eligible improvements to be provided in connection with the Project (or portions thereof) pursuant to the Project Approvals and applicable law. City shall diligently process the formation of the Public Financing District so long as (a) the application complies with law, (b) is consistent with City's standards, (c) provides for a lien-to-value ratio (if applicable) and other financial terms that are customary in the marketplace and reasonably acceptable to City, (d) the person, firm or entity initiating the proceedings advances such amounts as City reasonably requires to provide for staff and outside consultants to undertake such processing and to cover any other costs or expenses to be incurred by the City in connection with such Public Financing District (subject to Section 8.23.1.2 below) and (e) City has reviewed and approved (subject to Section 8.23.1.3 below) the proposed consultants to serve such transaction including, without limitation, bond counsel and underwriter. City shall proceed with commercially reasonable diligence to sell any Bonds to be issued in such Public Financing District upon the best terms then reasonably available in the marketplace; provided, however, that City's duty to market Bonds shall be suspended during any period when marketing conditions render the issuance economically infeasible and City shall have no liability or responsibility to Company with respect to the terms or timing of the Bond issuance so long as City proceeds in good faith and in accordance with this Agreement and the law governing the Public Financing Districts. Company may initiate one or more such Public Financing District proceedings with respect to all, or a portion, of the Project.

8.23.1 General Parameters.

The following general parameters shall be applicable to any Public Financing District formed in connection with the Project:

8.23.1.1 Advances. Upon written request of the City, the Company shall advance all amounts necessary to pay all costs and expenses of the City in evaluating and structuring any Public Financing District, to the end that the City will not be obligated to pay any costs related to the formation or implementation of any Public Financing District from its own

general funds. City staff will meet with the Company to establish a preliminary budget for such costs and will confer with the Company from time to time as to any necessary modifications to that budget.

8.23.1.2 Reimbursements. Company shall have the right to obtain reimbursement in any such Public Financing District proceedings, for any costs incurred or fees paid for administration, design and construction of improvements, fulfillment of the requirements of the Project Approvals and applicable law or implementation of mitigation measures that can properly be included in such Public Financing District proceedings (including, but not limited to, the costs advanced to the City as described in Section 8.23.1.1 above), such reimbursement to be made together with interest thereon at the rate of interest equal to the Company's cost of funds, subject to the limitations of applicable law. Company agrees to promptly submit to City an accounting of all such costs incurred by Company at such time as Company makes application for reimbursement.

8.23.1.3 Consultants. City shall consult with Company prior to engaging any consultant with respect to implementation of any Public Financing District (including, but not limited to, consultants in the following categories: bond counsel, underwriter, appraiser, market absorption analyst, financial advisor, special tax consultant, and project engineer) and Company shall be allowed an opportunity to provide input on each proposed consultant. The City shall consider all of Company's comments on the proposed consultants in its hiring decisions; provided, however, that the City shall have final authority over the consultants selected.

8.23.2 Public Improvements.

8.23.2.1 Acquisition. To the extent available, any public improvements will be acquired with the proceeds of Bonds issued in the Public Financing District covering the Property, or a portion thereof. The City understands that the Project is a master-planned development that will take many years to complete. The City agrees that any Bonds that will be

issued to finance the eligible improvements may be issued in several series over time. The City further agrees to diligently issue each series of Bonds, provided that the customary terms of such issuance are adhered to.

8.23.2.2 Escrow Bonds. The City will allow the issuance of escrowed Bonds provided customary protections are contained in the issuing documents.

8.23.2.3 Cost Savings. Wherever possible, the City shall allow Bond proceeds to offset a cost savings on one portion of the Project against a cost overrun on a different portion of the Project in such a manner that construction or acquisition of improvements shall not be prevented or delayed.

8.23.3 State and Local Assistance. In connection with implementation of the Project, the City, at no out-of-pocket cost or expense or other obligation or liability to City and without any recourse to City Funds, shall reasonably cooperate with the Company and the State of California, the County of Los Angeles, and any other agencies or departments that may provide assistance to or oversight of the Project, including, without limitation, the following:

(a) California Educational Facilities Authority;

(b) Department of Housing and Community Development;

(c) California Infrastructure and Economic Development Bank;

(d) Tax Credits Allocation Committee;

(e) California Health Facilities Financing Authority;

(f) California Department of Transportation;

(g) California Transportation Commission;

(h) Los Angeles County Metropolitan Transportation Authority;

(i) Gateway Cities Council of Governments;

(g) County of Los Angeles Airport Land Use Commission; and

(h) County of Los Angeles Public Works Department; and

(i) County of Los Angeles Flood Control District.

8.23.4 Enterprise Zone. The City acknowledges that the Project is located in an Enterprise Zone. Accordingly, the City will reasonably cooperate with the Company to make available all financial incentives that the Company is eligible to receive with respect to the Project as a result of being located in an Enterprise Zone.

8.24 Maintenance of Public Improvement Facilities.

Subject to the provisions of Section 2.4.3 above and the obligation of the Company and its successors and assigns to maintain the Privately Maintained Publicly Owned Infrastructure and all Project alleys, the City agrees that any remaining Public Improvement Facilities accepted by the City shall, following such acceptance, be maintained by the City. Maintenance of all Public Improvement Facilities, whether by Company and its successors and assigns or by City, shall survive termination of this Agreement.

8.25 Parks; Park and Recreation Facilities Fees.

The Project will contain four (4) public parks, Park A, Park B, Park C, and Park D, containing a total of not less than nine and three tenths (9.3) gross acres. The Parks shall be located within the Housing Districts and on the City Parcel described on Exhibit "M" hereto. The Parks are more specifically identified and described on Exhibits "E-1" and "E-2" attached hereto.

8.25.1 Park A. Park A shall consist of approximately four tenths (0.4) gross acres. Park A shall be fully improved in accordance with City-approved plans, including provision for public access, and the improvements thereon dedicated to and accepted by the City as part of the Phase 1 Project Infrastructure prior to the issuance of a Certificate of Occupancy for the first (1st) residential unit in the Project. The construction of Park A shall occur pursuant to a right of entry agreement between City and Company in the form attached hereto as Exhibit "N."

8.25.2 Park B. Park B shall consist of approximately two (2) gross acres. Park B shall be fully improved in accordance with City-approved plans, including provision for

public access, and dedicated to and accepted by the City as part of the Phase 1 Project Infrastructure prior to the issuance of a Certificate of Occupancy for the first (1st) residential unit in the Project.

8.25.3 Park C. Park C shall consist of approximately one and one tenth (1.1) gross acres, including a portion of Segment 2 of the Bike Path. Park C shall be fully improved in accordance with City-approved plans, including provision for public access, and dedicated to and accepted by the City prior to the sooner of (i) the earlier of (x) issuance of a Certificate of Occupancy for the nine hundred and first (901st) residential unit within the Project or (y) the issuance of a Certificate of Occupancy for any units which would allow occupancy of more than sixty five percent (65%) of the total residential acreage (net of Parks and Recreational Open Space and streets) contained within the Housing Districts or (ii) issuance of the first (1st) Certificate of Occupancy for a residential unit in Subarea 5. If Park C cannot be improved and delivered within the timeframe set forth in this Section due to ongoing remediation of hazardous materials or substances, which Company, notwithstanding its reasonable best efforts, has been unable to complete prior to said timeframes, Company and City shall, upon request of Company, meet and confer in good faith to determine whether the Company may be allowed additional time to deliver Park C. Any extension (or extensions) of time to deliver Park C shall be within the City's sole discretion and may be granted or withheld in the discretion of the City on such terms as determined necessary or appropriate. The City Manager shall have the right and authority (but not the obligation) to act on behalf of the City with respect to the approval of any such extension or extensions in writing.

8.25.4 Park D. Park D shall consist of approximately five and eight tenths (5.8) gross acres, including Segment 3 of the Bike Path. Park D shall be fully improved in accordance with City-approved plans, including provision for public access, and dedicated to and accepted by the City as part of the Phase 2 Project Infrastructure prior to the issuance of a Certificate of

Occupancy for the seven hundred and first (701st) residential unit in the Project, except as provided below.

8.25.4.1 Intent of the Parties. The Parties agree that the intent of this Agreement is to provide a park in the area designated for Park D as shown on Exhibits "E-1" and "E-2", hereto (the "Original Park D Location"). Consistent with that intent, the Parties agree that it is their intent and preference to cause the improvement and completion of Park D rather than payment of the Mitigation Amount, as defined below, in lieu of delivery of Park D, that payment of such Mitigation Amount is contemplated only in the event of environmental constraints that render accomplishment of the Parties' intent infeasible, that payment of such Mitigation Amount is a less desirable alternative to delivery of Park D for both the City and the Company, and that the Parties will use their good faith efforts to avoid that result.

8.25.4.2 Delay of Delivery Due to Remediation; Security. If Park D cannot be improved and delivered at the Original Park D Location prior to the issuance of a Certificate of Occupancy for the seven hundred and first (701st) residential unit in the Project due to ongoing remediation of hazardous materials or substances, which Company, notwithstanding its reasonable best efforts, has been unable to complete prior to said seven hundred and first (701st) Certificate of Occupancy, then, as a condition to issuance of the Certificate of Occupancy for the seven hundred and first (701st) residential unit, Company shall provide City with (a) all documentation reasonably necessary to establish the basis for and contemplated scope of the delay and to demonstrate to the City's satisfaction, in its discretion, that Company has exercised its best efforts and diligently taken all steps and pursued all permits, approvals and actions available to avoid such delay (which documentation shall include, if obtainable, written confirmation from the lead governmental agency handling such remediation effort that current development of Park D for park use is precluded by the uncompleted remediation of said property), and (b) a corporate guarantee from Boeing, or a letter of credit from Company, or a successor or assign in the amount of seven million one hundred and fifty thousand dollars

($7,150,000) increased by the percentage change in the CPI between the Effective Date and the Park D Outside Date, as defined below, (the "Projected Park Cost") in each case in form and substance acceptable to City (the "Security"). Upon demonstration, to the City's satisfaction in its sole discretion, that delay due to the uncompleted remediation was unavoidable and the posting of the Security, City shall proceed with issuance of certificates of occupancy notwithstanding the failure to complete Park D and Company will have until five (5) years after completion and acceptance by the City of the Phase 1 Project Infrastructure (the "Park D Outside Date") to deliver Park D.

8.25.4.3 Meet and Confer Prior to Park D Outside Date; Extension of Time or Relocation of Park D. If twelve (12) months prior to the Park D Outside Date, Company anticipates that additional time beyond the Park D Outside Date will be needed to deliver Park D due to the status of the ongoing remediation of Park D, Company and City shall, upon request of Company, meet and confer in good faith to determine whether the Company may be allowed additional time to deliver Park D, or whether the Company may relocate Park D to an alternative site in the vicinity of the Original Park D Location. Any extension (or extensions) of time to deliver Park D shall be within the City's sole discretion and may be granted or withheld in the discretion of the City on such terms as determined necessary or appropriate. The City Manager shall have the right and authority (but not the obligation) to act on behalf of the City with respect to the approval of any such extension or extensions in writing. Any permission to relocate Park D shall be subject to approval by the City Council in its sole discretion and, if approved, Company, at its election, may request a Subsequent Discretionary Action to determine the applicability of an alternative use(s), if any, for the Original Park D Location following completion of the relocated Park D.

8.25.4.4 Mitigation Amount; Meet and Confer Following Mitigation Payment. If no extension of time beyond the Park D Outside Date or permission to relocate Park D is granted, or if Company fails to complete and dedicate Park D by the extended Park D

Outside Date, as applicable, then, on the Park D Outside Date, as it may have been extended, Company shall pay to City, for application to offsite park and recreation facilities by the City, an amount equal to the Projected Park Cost (the "Mitigation Amount"). If Company fails to pay the Mitigation Amount to the City when it is due, then City shall be entitled to the legal rate of interest from the date the Mitigation Amount is due until the date it is paid, in addition to any attorneys' fees, and the City shall have no further obligation to issue, and Company, on behalf of itself and its successors and assigns, hereby waives and relinquishes any further right to receive, any permits, approvals or certificates, including Certificates of Occupancy, in connection with further Development within the Project. The foregoing provision shall apply regardless of the form of Security posted by Company or its successors or assigns to secure the Mitigation Amount. Upon payment of the Mitigation Amount, Company shall have no further obligation to improve Park D nor any further obligation to offer to dedicate Park D to the City, except as provided below. Following payment of the Mitigation Amount, the Parties shall meet and confer in good faith to determine whether Company will continue efforts to remediate the Original Park D Location to active park and recreation standards, as determined by the Regional Water Quality Control Board, Los Angeles Region, or to some other standard as agreed to by the Parties; provided, that in any event, the Original Park D Location shall be remediated by Company at least to the standard required by and in accordance with applicable law. If, following payment of the Mitigation Amount, the Parties agree that the Original Park D Location should be remediated to active park and recreation standards, Company shall irrevocably offer to dedicate the Original Park D Location to the City upon completion of such remediation. Any such irrevocable offer may expire after a period of time agreed to by the Parties. In the event that the Original Park D Location is dedicated to the City and/or improved by Company, such improvement by the Company to be at its sole election, following the payment of the Mitigation Amount as provided in this Section, the Company shall not be entitled to any refund of the

Mitigation Amount or any portion thereof nor shall City have any obligation to Company to further improve Park D following the dedication thereof.

8.25.4.5 City's Failure to Accept Park D. In the event that Company completes the required remediation of Park D to park and recreation standards in accordance with applicable law, completes improvement of Park D in accordance with all City-approved plans, obtains City approval of those improvements, offers to dedicate to City a fully improved Park D before the Park D Outside Date or before the expiration of any extensions granted under Section 8.25.4.3 of this Agreement, performs all other obligations of Company under this Agreement with respect to Park D, and the City does not accept Park D for any reason, the Company shall have no further obligation to pay the Mitigation Amount, and shall be entitled to the return of any Security posted in connection therewith. In the event that City does not accept Park D, Park D shall be maintained as privately-maintained space available and open for public use in accordance with the provisions set forth in Section 8.25.6.

8.25.5 Park Plans; Indemnity; Impact Fees. Improvement of all Parks shall be in accordance with plans and specifications therefor to be approved by the City following the Effective Date. Company shall, without reimbursement from the City, prepare, develop, and process for City approval such plans prior to construction of each Park. In connection with preparation of those plans and as a part thereof, the City and Company shall also develop a mutually acceptable vehicular parking plan to allow full access to and use of the Parks and to adequately service the Parks. In connection with improvement of Parks B, C, and D, Company shall provide, or shall cause the Association to provide, to the City an indemnity in form and substance reasonably acceptable to the City, indemnifying, defending and holding the City, City Agencies, and City Representatives harmless from any Liabilities resulting from any hazardous substances or materials located on, under or adjacent to the Park property, except to the extent any such hazardous substances, materials or related contamination was caused by City, any City Agencies, or City Representatives. The CC&Rs shall (a) obligate the Association to maintain the

Parks in good condition and repair in perpetuity in accordance with minimum City standards at the sole expense of the Association and without cost or expense to the City; provided, however, that the City shall provide irrigation water (which may be reclaimed water) and power to the irrigation controllers for the Parks at no charge to the Association, and (b) require that the Parks, even if not accepted by the City, remain open for public use in accordance with the provisions set forth in Section 8.25.6. Notwithstanding anything herein to the contrary, City reserves the right to refuse any offer of dedication of any proposed Park if the City so elects in its discretion; provided, however, that in that event, so long as Company has completed improvement of the Parks in accordance with all City-approved plans and specifications, public access and parking has been provided for the Parks as contemplated herein, Company has completed any required remediation with respect to the Park site, including, without limitation, obtaining a no further action letter from all applicable governmental authorities, Company or the Association offered to provide the required indemnity to the City, Company has established the required provisions for maintenance of the Parks by the Association, and the Park areas are required to remain open and available for public use, the City's election not to accept title to the Parks shall not constitute a breach of this Agreement by the Company or constitute a failure by the Company to perform its park obligation hereunder. In the event and to the extent that City does not accept delivery of any Park, no indemnity of the City shall be required under this Section with respect to such Park. Notwithstanding anything to the contrary in this Agreement, Company shall pay all park and recreation Impact Fees applicable to development of the Project in addition to providing the Parks and Recreational Open Space areas and improvements required by Sections 2.4.1 and 8.25, and the construction and delivery of the Parks and Recreational Open Space improvements required by Sections 2.4.1 and 8.25 shall not limit, waive or in any way reduce those Impact Fees payable by Company pursuant to the remaining terms of this Agreement.

8.25.6 Maintenance Responsibilities in Event of City's Failure to Accept Parks.

In the event that City does not accept any of the Parks, Company, at its sole cost and expense, shall be required to maintain the Parks as privately maintained space available and open for public use in accordance with minimum City standards established in the CC&Rs. Such obligation may be assigned to the Association pursuant to the CC&Rs or another recorded instrument approved by City as provided by Section 2.4.3, but such assignment shall not waive or limit such maintenance standards or affect in any way the requirement that the Parks remain open for public use.

8.26 Use of City Property for Park Improvements.

As set forth in Section 8.25 above, in connection with development of the Phase 1 Project Infrastructure, the Company, at its sole cost and expense, shall improve the City Parcel as a public park in accordance with the City-approved plans and specifications, including, if City so elects, integration of such park into the City bike path system; provided, however, that Company shall have no responsibility for remediation of any pre-existing hazardous materials located on or under the City Parcel for which neither the City, nor Company, nor Company's predecessors in interest is legally responsible. Subject to Company's improvement of the City Parcel as provided above, such improvement shall satisfy Company's Park A obligation under Section 8.25 above.

8.27 Transportation Demand Management Program.

The City shall cooperate with Company at no cost to the City in the implementation of transportation demand management actions and measures from the menu of actions and measures set forth in the Transportation Demand Management ("TDM") program, as required by the Mitigation Monitoring Program. Subject to the Reserved Powers, the City agrees that so long as Company conforms to the TDM program and the Mitigation Monitoring Program with respect to the Project, the Project will not be subject to any other City-imposed transportation demand management measures during the Term of this Agreement.

8.28 Transportation Improvements.

In addition to any TDM measures implemented with respect to the Project, the Project will incorporate the Transportation Improvements to service the Project and to reduce project-related and regional background traffic impacts within the Project area. In the event any specific Transportation Improvement is constructed by a private entity other than Company, its successors or assigns, that specific Transportation Improvement mitigation requirement will be deemed to have been satisfied and no additional mitigation or cost will be required from Company for that Transportation Improvement. In the event that public funds (including, but not limited to, Federal or State government or third party funds received by the City, but not including any City Funds) for a Transportation Improvement come from sources not related to Company or the Project, that specific Transportation Improvement mitigation requirement also will be deemed to have been satisfied and no additional mitigation or cost will be required from Company for that Transportation Improvement. The City and Company may agree to jointly pursue other public funds for Transportation Improvement(s). If so, City and Company agree that pursuit of said public funds shall be at the sole risk and expense of the Company and that the Company shall not pursue funding otherwise available to the City for transportation purposes by formula or through the competitive process of the Los Angeles Metropolitan Transportation Authority. If City Funds are used for a Transportation Improvement, additional mitigation or cost may be required from Company by City in an amount equal to those City Funds for enhancement of that Transportation Improvement or for additional transportation improvements. In the event a Transportation Improvement or related transportation requirement is rejected by a jurisdiction where such Improvement or requirement is located, a mitigation measure of reasonably similar cost and effectiveness may be substituted as City shall direct. If no feasible measure of reasonably similar cost and effectiveness can be identified, then an in-lieu payment in the amount of the cost of the original improvement shall be made to the City's Traffic Mitigation Program Fund. The cost of the original improvement shall be determined by a Project Study Report or equivalent document acceptable to the City's Director of Public Works.

If a regional or subregional transportation improvement program which contains, in whole or in part, the Project's Transportation Improvements is implemented or caused to be implemented by Company, Caltrans or any other public agency, or a combination of the foregoing entities without use of City Funds, Company will be excused from implementing any such Transportation Improvements once such transportation improvements are constructed pursuant to that program. In addition, if a regional or subregional transportation improvement program, which also mitigates Project traffic impacts, is implemented or caused to be implemented by Company, Caltrans or any other public agency, or a combination of the foregoing entities, Company shall receive credit for such mitigation and will be excused from implementing any Transportation Improvements that were designed to mitigate such Project traffic impacts.

In the event that the Project is proceeding with timely preparation of plans and attempting to obtain approvals and permits for Transportation Improvements, and delays are encountered which the Parties mutually agree are beyond the control of the Company, no building permits or certificates of occupancy will be withheld by the City as a result of such delays. As to improvements not within the sole jurisdiction of the City of Long Beach, once the Company has suitably guaranteed (through a performance bond or other security reasonably satisfactory to the City) the development of a Transportation Improvement (other than a Transportation Improvement included in the On-Site Project Infrastructure Phasing Plan) required to be implemented during a particular improvement phase of the Project, as described in Exhibit F to this Agreement, and if the Parties mutually agree implementation of such Transportation Improvement has been delayed for reasons beyond the control of the Company, the Company shall be entitled to a certificate of occupancy for any building that will generate Peak Hour trips which trigger such Transportation Improvement notwithstanding the delay in construction thereof.

8.29 Project Trip Cap; Trip Generation; Trip Equivalency and Transportation Improvements Phasing.

The Project Trip Cap is five thousand eight hundred seventy-two (5,872) Peak-Hour trips. If the calculated Project trip generation exceeds such Trip Cap, no Project building permit shall be issued until the Company demonstrates that any trips in excess of such Trip Cap will be eliminated or the impacts of such excess trips are mitigated to the satisfaction of the City Traffic Engineer.

Implementation of the Transportation Improvements shall be triggered according to the calculated Project Peak Hour trip generation. The calculated Project Peak Hour trip generation shall be based on the Project Trip Generation Rates of Proposed Uses shown in Table F-1 of Exhibit "F", including trip generation credit for demolished buildings that have occurred or are expected to occur on or after October 1, 2002, as documented by the Company and as shown in Table F-1 of Exhibit "F". If more current trip generation rates applicable to the Project uses are available and have been published in the Institute of Transportation Engineers ("ITE") Trip Generation manual, the City Traffic Engineer shall have the option of using the more current ITE rates. Where development flexibility is allowed, such flexibility shall be based on the Project Trip Generation Equivalency Rates for Proposed Uses shown in Table F-2 of Exhibit "F". For allowable Project uses that are difficult to categorize according to Table F-1 or Table F-2 of Exhibit "F", the City Traffic Engineer shall use reasonable methods to establish the appropriate trip generations or equivalencies for those uses.

The schedule for the implementation of the Transportation Improvements shall be based on the Transportation Improvements and Phasing Program shown in Exhibit "F". The Company may voluntarily advance the implementation of any Transportation Improvement.

8.30 Project Assistance for Affordable Housing.

The Project will contribute to the affordable housing goals of the City through the payment by Company and its successors and assigns to the City's Housing Development Fund of

fees in the total amount of three million dollars ($3,000,000) (the "Housing Payment") for application by the City in such manner as it shall determine appropriate, in its sole discretion, towards the City's existing and future affordable housing programs and costs. The Housing Payment will be payable at the following times and in the following amounts:

Payment Timing	Residential
Execution of Development Agreement[1]	250,000
1st Residential Unit[2]	425,000
451st Residential Unit[2]	675,000
901st Residential Unit[2]	650,000
TOTAL	**2,000,000**

[1] The initial payment will not be due until this Agreement has been approved and executed and the period for bringing any challenge thereto under Government Code section 65009(c)(1)(D) has expired with no appeal having been filed, or, if such an appeal has been filed, resolution of such appeal in a manner which upholds the effectiveness of this Agreement or is otherwise approved by the Company, which approval shall not be unreasonably withheld.

[2] The payments shall be due within fifteen (15) days after the occurrence of the event triggering such payment. The triggering events for the three residential payments are, respectively: (i) issuance of the first (1st) residential certificate of occupancy; (ii) issuance of the four hundred and fifty first (451st) certificate of occupancy for a residential unit; and (iii) issuance of the nine hundred and first (901st) certificate of occupancy for a residential unit.

Payment Timing	Commercial
Phase 1 On-Site Roadway Infrastructure[3]	325,000
Phase 2 On-Site Roadway Infrastructure [3]	325,000
Phase 3 and/or Enclave Phase On-Site Roadway Infrastructure[3]	350,000
TOTAL	**1,000,000**

The Parties acknowledge and agree that all payments made by Company pursuant to this Section are fees collected under a development agreement adopted pursuant to Article 2.5 (commencing with section 65864) of Chapter 4 for purposes of Government Code section 66000 *et seq.*, and that such fees are therefore exempt from the Mitigation Fee Act, except as provided in section 65865(e) of the Development Agreement Act. Notwithstanding anything in this Agreement to the contrary, Company's obligation to pay the Housing Payment shall survive termination of this Agreement; and, notwithstanding termination of this Agreement, if Development of the Property and the City Parcel, or any portion thereof, as contemplated by Section 2.4 thereafter occurs, the payments required by this Section 8.30 shall be made concurrent with such Development at the times provided herein. Payment of such amounts shall be a condition to issuance of certificates of occupancy for the applicable Development of the Project.

[3] The payments shall be due within fifteen (15) days after the occurrence of the event triggering such payment. The triggering events for the three (3) On-Site Roadway Infrastructure phases are, respectively: (i) issuance of the first (1st) certificate of occupancy for a commercial use in the Project or completion of the Phase 1 On-Site Roadway Infrastructure, whichever occurs first; (ii) issuance of the first (1st) certificate of occupancy for a commercial use within the area covered by Phase 2 On-Site Roadway Infrastructure or completion of the Phase 2 On-Site Roadway Infrastructure, whichever occurs first; and (iii) issuance of the first (1st) certificate of occupancy for a commercial use within the areas covered by either the Phase 3 On-Site Roadway Infrastructure or the Enclave Phase On-Site Roadway Infrastructure or completion of the On-Site Roadway Infrastructure improvements within one of those Phases, whichever occurs first; provided that, for purposes of the foregoing (iii), all uses in existence within the Boeing Enclave (Enclave Phase) as of the Effective Date of this Agreement shall be disregarded; and, provided further, in no event shall the Phase 3/Enclave Phase payment be made later than five (5) years after the Phase 2 On-Site Roadway Infrastructure payment was due.

8.31 School Agreement.

Company shall cause Boeing Realty Corporation to comply with the terms of the School Agreement.

8.32 Airport Compatibility Measures.

The CC&Rs and any deed conveying all or a portion of the Property after the Effective Date shall contain a statement in substantially the following form:

> The subject property is located in the immediate vicinity of Long Beach Airport – Daugherty Field (the "Airport"), which is a public use commercial airport serving the general public. As a result, owners and residents of the subject property are routinely subject to noise, dust, fumes and other effects from the operation of aircraft at, to and from the Airport. Aircraft using the Airport may routinely use the airspace above or in the vicinity of the subject property. The volume of aviation activity and resulting effects on the subject property may increase in the future. The effects of aircraft operations and the operation of the Airport may cause owners and residents of the subject property to experience inconvenience, annoyance, discomfort, and may otherwise impair or adversely affect normal activities on, and the comfortable use and enjoyment of, the subject property. These effects may also adversely affect the fair market value which the subject property might otherwise have in the absence of aircraft operations at, to or from the Airport. An easement has been granted and recorded which grants airspace rights over, and the right to cause such effects on, the subject property. This easement protects the right of such aircraft and airport operations and precludes any resulting claims of damage or injury to the subject property, or to any person residing on or owning the subject property.

Concurrently with the approval and execution of this Agreement, Company shall execute, deliver to the City, and record an Airspace And Avigation Easement over the Property in the form attached hereto as Exhibit "O". In addition, any and all CC&Rs will refer to, describe and require adherence to the Airspace And Avigation Easement. In addition, Company or any of its successors and assigns which develop, construct, and then sell, rent or lease to any person any building or other structure on any portion of the Property shall require each

purchaser, renter or lessee of any such building or structure to execute a notarized "Acknowledgment of Notice of Airspace And Avigation Easement" (the "Acknowledgment"). The Acknowledgment shall be prepared in bold type, not less than 13 pt., and shall: (i) specify the portion of the Property being purchased or leased or rented; (ii) be executed and acknowledged by each purchaser or renter or lessee; (iii) contain the disclosure that an airspace and avigation easement has been recorded against, and is binding upon all persons owning, leasing or using the portion of the Property being sold or leased or rented; (iv) contain the disclosure required by this section to be included in the CC&Rs; and (v) contain an express Acknowledgment by the purchaser or renter or lessee that it is purchasing or renting or leasing the specified portion of the Property subject to such airspace and avigation easement and that, in so doing, it is waiving legal claims and rights which it might otherwise have with respect to the aviation activities permitted by such easement.

The original executed and notarized Acknowledgment shall be delivered by the escrow agent for the transaction, or if there is no escrow, by the seller or lessor, to the City at the address contained in Section 8.5.

Without limiting, restricting or in any way waiving the scope of the provisions set forth above, Company and its successors and assigns also hereby acknowledge and confirm their obligation to minimize the impacts of airport-related activities on the Project, including installation of double-paned windows and other construction standards, conduct of subsequent noise assessments or acoustical studies, compliance with Title 21 requirements, and prohibition of any residential uses inside the level 60 Community Noise Equivalent Level (CNEL) contour as that 60 CNEL exists on the Effective Date and as shown on Exhibit "P", hereto. All residential uses depicted on Exhibit "C", hereto, are hereby confirmed to be outside of the 60 CNEL contour for purposes of this Section

8.33 Provision of Real Property Interests by City.

In any instance where Company is required, as a condition of the Project Approvals, to construct any public improvement on land not owned by Company, City shall first have acquired the necessary real property interests to allow Company to construct such public improvements at the Company's expense, or, as provided in Government Code section 66462.5, such conditions requiring construction of that off-site improvement shall be conclusively deemed to be waived. All costs associated with such acquisition or condemnation proceedings, if any, shall be Company's responsibility, and may be included in the Public Financing District (although the failure to do so shall not excuse Company's responsibility for all such costs). Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall be construed, understood or applied to limit, restrict or waive, in any manner, any eminent domain powers of the City or any City Agency.

8.34 Binding Effect of Agreement.

From and following the Effective Date, Development of the Property and City actions on applications for Ministerial Permits and Approvals and Subsequent Discretionary Project Approvals respecting the Property shall be subject to the terms and provisions of this Agreement.

8.35 Statute of Limitation and Laches.

City and Company agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(D) of the Government Code, which provides for a ninety (90) day statute of limitation to challenge this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation which is filed and served more than ninety (90) days after the execution of this

Agreement, City and Company shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses.

8.36 Entire Agreement.

This Agreement and the Project Approvals referenced herein set forth and contain the entire understanding and agreement of the Parties and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations, understandings, or covenants shall be admissible in any proceedings of any kind or nature to interpret or determine the provisions or conditions of this Agreement.

8.37 Legal Advice; Neutral Interpretation; Headings; Table of Contents.

Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation thereof. The headings and table of contents used in this Agreement are for the convenience of reference only and shall not be used in construing this Agreement.

8.38 Singular and Plural.

As used herein, the singular of any word includes the plural.

8.39 No Third Party Beneficiaries.

This Agreement is made and entered into for the sole protection and benefit for the Parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

8.40 Eminent Domain.

No provision of this Agreement shall be construed, understood or applied to limit, restrict or waive in any manner any eminent domain powers of the City or any City Agency.

8.41 Authority to Execute.

The person or persons executing this Agreement on behalf of Company warrants and represents that he/they have the authority to execute this Agreement on behalf of Company and warrants and represents that he/they has/have the authority to bind Company to the performance of its obligations hereunder.

8.42 Force Majeure.

Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes, court actions (such as restraining orders or injunctions), or other causes beyond the Party's control; provided, that, the foregoing shall not apply to and a Party's performance shall not be excused for lack of financing or availability of financial resources to a Party. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not, under any circumstances, be cumulatively extended under this Section for more than a total of five (5) years and, in no event, may the Term of this Agreement, as so extended, exceed twenty-five (25) years from the Effective Date of this Agreement.

8.43 Estoppel Certificate.

Within thirty (30) business days following a written request by either of the Parties, the other Party to this Agreement shall execute and deliver to the requesting Party a statement in the form attached as Exhibit "Q" hereto certifying that (a) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications; (b) there are no known current uncured defaults under this Agreement or

specifying the dates and nature of any such known default; and (c) any other reasonable information requested.

8.44 Mortgagee Protection.

The Parties hereto agree that this Agreement shall not prevent or limit Company, in any manner, at Company's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Company and representatives of such lenders to negotiate in good faith any such request for interpretation or modification; provided, that City shall have no obligation to agree to any interpretation or modification that would adversely affect its rights or increase its obligations under this Agreement or if such interpretation or modification is inconsistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Company in the performance of Company's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Company under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten

(10) days of sending the notice of default to Company. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed Company under this Agreement, except that as to a default requiring title or possession of the Property or any portion thereof to effectuate a cure, if the Mortgagee timely cures all defaults which do not require possession to effectuate a cure and commences foreclosure proceedings to acquire title to the Property or applicable portion thereof within ninety (90) days after receipt from City of the written notice of default and thereafter diligently and continuously prosecutes such foreclosure to completion, the Mortgagee shall be entitled to cure such default after obtaining title or possession provided that such Mortgagee does so promptly and diligently after obtaining title or possession.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Company's obligations or other affirmative covenants of Company hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Company is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Property acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, or assert any rights of Company hereunder, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and shall be subject thereto and bound thereby and shall comply with

the terms, conditions and requirements of the Project Approvals applicable to the Property or such part thereof so acquired by the Mortgagee.

8.45 Public Art Requirement.

The Project shall include a public art component reflecting the Property's historical significance or other thematic elements important to creating the Project's new identity, including, for example but not by way of limitation, propeller pylons and street plaques containing text and graphics of historical information, "First Around the World" Globe public area, or displays concerning the history and evolution of fabricating techniques and technology concerning airplane manufacture. Within one (1) year of the Effective Date, Company shall prepare and submit a Public Art Master Plan to be reviewed and approved by the Public Corporation for the Arts. The public art component will not be subject to any design review or Discretionary Approval by the City other than review and approval by the Public Corporation for the Arts. It is the intent of the Parties that the Public Art Master Plan be implemented in conjunction with Development of the Project.

IN WITNESS WHEREOF, the Parties have each executed this Agreement on the date first above written.

CITY OF LONG BEACH, a charter city and municipal corporation of the State of California

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

Date: _____

ROBERT SHANNON, City Attorney

By: _____

APPROVED AS TO FORM:

Date: _____

BROWN, WINFIELD, CANZONERI

By: _____

McDONNELL DOUGLAS CORPORATION, a Maryland corporation

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____